# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 218. 86

LOUIS AUGUSTE MARANDE, JULES EMILE ROEDERER, AND PAUL LEON ROEDERER, PLAINTIFFS IN ERROR,

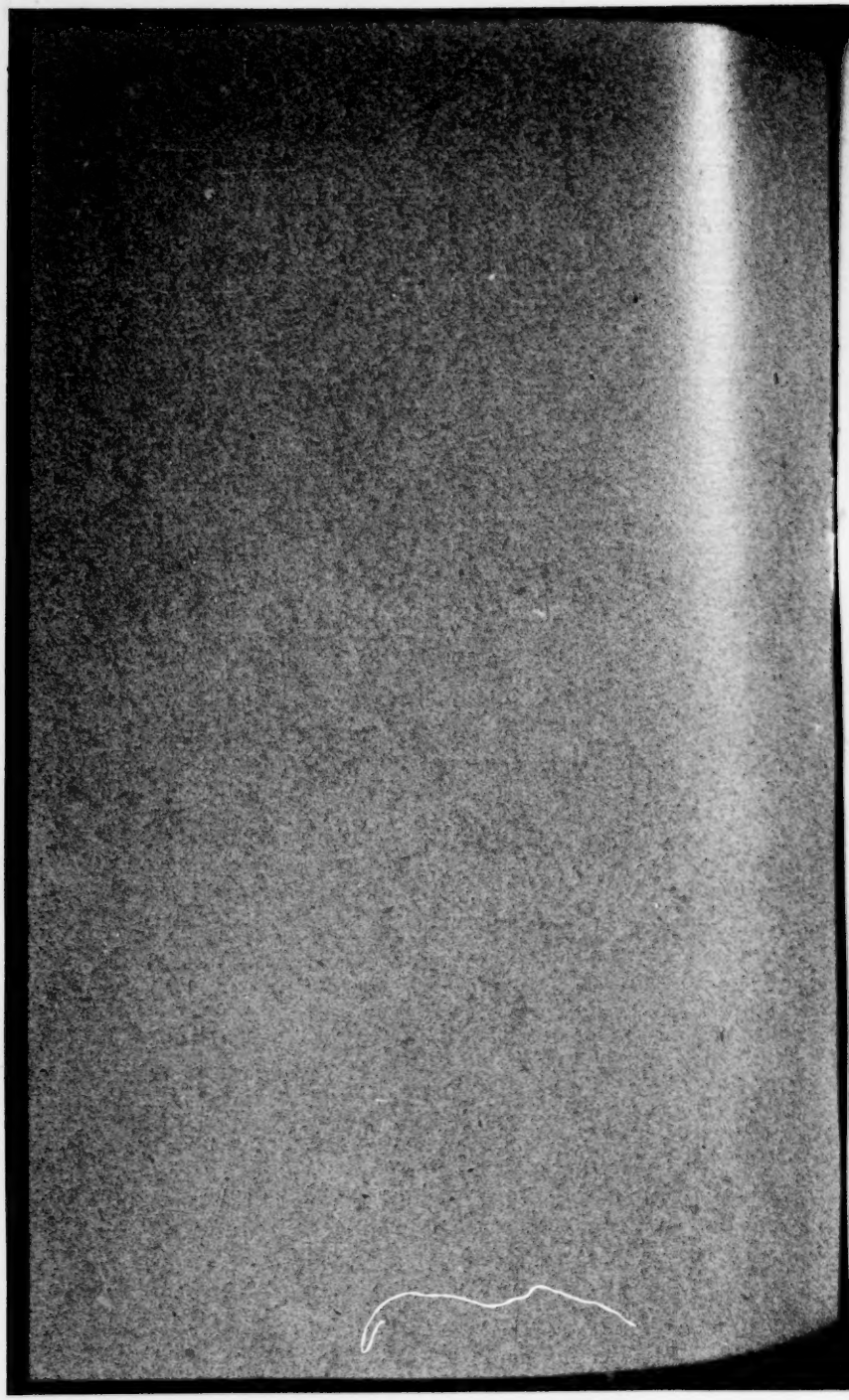
*vs.*

THE TEXAS AND PACIFIC RAILWAY COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED JUNE 19, 1900.

(17,803.)



# (17,803.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1900.

## No. 318.

LOUIS AUGUSTE MARANDE, JULES EMILE ROEDERER, AND PAUL LEON ROEDERER, PLAINTIFFS IN ERROR,

*vs.*

THE TEXAS AND PACIFIC RAILWAY COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Second Circuit.

LOUIS AUGUSTE MARANDE ET AL., Plaintiffs in Error,
*vs.*
THE TEXAS AND PACIFIC RAILWAY COMPANY, Defendant in Error.

*Transcript of Record.*

Error to the circuit court of the United States for the southern district of New York.

United States circuit court of appeals, second circuit. Filed Feb. 7, 1900. William Parkin, clerk.

1 UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer, plaintiffs, and The Texas and Pacific Railway Company, defendant, a manifest error hath happened, to the great damage of the said Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer, as is said and appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the judges of the United States circuit court of appeals for the second circuit, at the city of New York, together with this writ, so that you have the same at the said place, before the judges aforesaid, on the 15th day of February, 1900, that, the record and proceedings aforesaid being inspected, the said judges of the United States circuit court of appeals for the second circuit may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22d day of January, in the year of our Lord one thousand nine hundred, and of the In-
2 dependence of the United States the one hundred and twenty-fourth.

JOHN A. SHIELDS.
[L. S.] *Clerk of the Circuit Court of the United States of America for the District of New York, in the Second Circuit.*

The foregoing writ is hereby allowed.
E. HENRY LACOMBE,
*U. S. Circuit Judge.*

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from 3 to 309, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer, plaintiffs in error, against The Texas and Pacific Railway Company, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this third day of February, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

[L. S.] JOHN A. SHIELDS, *Clerk.*

(Stamp.)

(Endorsed:) The U. S. circuit court of appeals for the second circuit. Louis Auguste Marande and others, plaintiffs in error, *vs.* The Texas and Pacific Railway Company, defendant in error. Writ of error. Evarts, Choate & Beaman, attorneys for plaintiffs in error. Due service of a copy of the within writ of error is hereby admitted this 23d day of January, 1900. Rush Taggart, attorney for defendant in error. U. S. circuit court. Filed January 23, 1900. John A. Shields, clerk.

3

Circuit Court of the United States for the Southern District of New York.

LOUIS AUGUSTE MARANDE, JULES EMILE ROEDERER, PAUL LEON Roederer
*vs.*
THE TEXAS AND PACIFIC RAILWAY COMPANY.

John A. Shields, clerk circuit court U. S., southern district of N. Y.:

You will please issue a summons to the defendant, The Texas and Pacific Railway Company, in the above-entitled action.

EVARTS, CHOATE & BEAMAN,
*Attorneys for Plaintiffs.*

Office and post-office address, No. 52 Wall street, borough of Manhattan, New York city.

(Endorsed:) Circuit court U. S., southern district of N. Y. Louis Auguste Marande *vs.* The Texas Pacific R'w'y Co. Præcipe for summons. Evarts, Choate & Beaman, attorneys for plaintiffs. U. S. circuit court. Filed Dec. 6, 1895. John A. Shields, clerk.

4 United States Circuit Court, Southern District of New York.

LOUIS AUGUSTE MARANDE, JULES EMILE ROEDERER, PAUL LEON ROEDERER
*against*
THE TEXAS AND PACIFIC RAILWAY COMPANY.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiffs' attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at the city of New York, the 6th day of December, in the year one thousand eight hundred and ninety-five.

[L. S.] JOHN A. SHIELDS, *Clerk.*
EVARTS, CHOATE & BEAMAN,
*Plaintiffs' Attorneys.*

Office and post-office address, No. 52 Wall street, New York city.

5 United States Circuit Court, Southern District of New York.

LOUIS AUGUSTE MARANDE, JULES EMILE ROEDERER, PAUL LEÓN ROEDERER
*against*
THE TEXAS AND PACIFIC RAILWAY COMPANY.

The plaintiffs herein, by Evarts, Choate & Beaman, their attorneys, complain of the defendant, The Texas and Pacific Railway Company, and allege, upon information and belief, as follows:

First. At all the times hereinafter mentioned, the plaintiffs were and are now partners doing business as cotton merchants in the city of Havre, France, under the firm name of Roederer Frères A. Marande & Co., and are citizens of the Republic of France.

Second. At all the said times the defendant was and now is a railroad corporation duly created and existing under and by virtue of an act of Congress of the United States of America, approved March 3, 1871, and was and is now engaged in conducting the business of a common carrier of merchandise for hire from various places in the State of Texas to Westwego, in the State of Louisiana, and was and is an inhabitant of the southern district of New York.

Third. Heretofore, and in the month of October, 1894, at Greenville, in the State of Texas, the plaintiffs delivered to the
6 said defendant as such common carrier 100 bales of cotton, weighing 54,063 pounds, and the defendant then and there received the same, and then and there undertook and agreed, as a common carrier as aforesaid, to carry the same, safely and securely, at a through price or rate of freight from the said place of shipment

to Havre, France, by way of New Orleans, and thence to Havre, France, by the Elder, Dempster & Co.'s line of steamships, and there to deliver the same to the plaintiffs upon the payment of freight therefor.

Fourth. The said defendant has failed to keep its said agreements and to carry safely 65 of said bales of cotton to Havre aforesaid, and there deliver the same to the plaintiffs, although the plaintiffs have duly demanded delivery thereof, and although they have been at all times ready and willing to pay the said freight for such carriage; and, through the negligence and carelessness of the defendant and without the fault of the plaintiffs, said 65 bales of said bales of cotton weighing upwards of 35,141 pounds, and of the value of two thousand three hundred and fifty-two $\frac{24}{100}$ dollars, were, on or about the twelfth day of November, 1894, wholly destroyed by fire at Westwego, in the State of Louisiana aforesaid, at which time and place the same were in the possession of the defendant in the course of such carriage and as a common carrier as aforesaid. The bales so destroyed were marked as follows: 65 bales marked DIXO.

Fifth. The plaintiffs have duly demanded the payment to them by the defendant of the said value of the said 65 bales of cotton thus destroyed, and have duly performed all the acts necessary for them to do under and by virtue of said agreements, but the defendant has refused to pay the plaintiffs the value of the bales of cotton destroyed as aforesaid, or any part thereof, although the defendant has admitted that said bales of cotton were destroyed by fire at Westwego aforesaid.

7 Wherefore the plaintiffs demand judgment against the defendant for the sum of two thousand three hundred and fifty-two and $\frac{24}{100}$ dollars, with interest thereon from the 12th day of November, 1894, besides the costs of this action.

EVARTS, CHOATE & BEAMAN,
*Attorneys for the Plaintiffs, No. 52 Wall Street,*
*New York City, New York.*

SOUTHERN DISTRICT OF NEW YORK, }
*City and County of New York,* } *ss.:*

I, Treadwell Cleveland, being duly sworn, depose and say as follows: I am one of the attorneys and of counsel for the plaintiffs in the above-entitled action, and have read the foregoing complaint and know the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all the matters in said complaint not stated upon my knowledge are as follows, namely, the possession of the original documents relating to the shipment and value of the cotton and communications received from the defendant and others in relation to its destruction.

The reason why this verification is not made by the plaintiffs is that the plaintiffs do not reside and are not now within the city and county of New York, where the plaintiffs' attorneys reside or have their office.

TREADWELL CLEVELAND.

Sworn to before me this 12th day of December, 1895.

MARVELLE C. WEBBER,
[SEAL.] *Notary Public, New York County.*

(Endorsed:) United States circuit court, southern district of New York. Louis Auguste Marande, Jules Emile Roederer, Paul Leon Roederer against The Texas and Pacific Railway Company. Summons and complaint. Evarts, Choate & Beaman, No. 52 Wall street, New York city, attorneys for the plaintiffs. U. S. circuit court. Filed Jan. 3, 1896. John A. Shields, clerk.

8

United States Circuit Court, Southern District of New York.

LOUIS AUGUSTE MARANDE, JULES EMILE ROEDERER, PAUL LEON ROEDERER, Plaintiffs,
*against*
THE TEXAS AND PACIFIC RAILWAY COMPANY, Defendant.

The above-named defendant, by Rush Taggart, its attorney (protesting, however, that the court is without jurisdiction for the reason that the defendant is not an inhabitant of the southern district of New York, and not consenting to the said jurisdiction), answers the complaint herein as follows:

First. Said defendant has no knowledge or information sufficient to form a belief as to any or either of the allegations contained in the paragraph or subdivision of said complaint designated first.

Second. The said defendant admits the allegations contained in the paragraph or subdivision of said complaint designated second, save and excepting the allegation that the defendant was and is an inhabitant of the southern district of New York, which said allegation defendant denies.

9

Third. Said defendant admits that heretofore and in the month of October, 1894, at Greenville, in the State of Texas, there was delivered to the defendant by the plaintiff certain cotton, being the number of bales specified in the paragraph or subdivision of said complaint designated third and destined as therein stated, but that defendant has no knowledge or information sufficient to form a belief as to the weight of said cotton, and the defendant denies each and every other allegation contained in the said paragraph or subdivision of said complaint.

Fourth. Said defendant admits that sixty-five bales of said cotton, marked as described in the paragraph or subdivision of the said complaint designated fourth, were destroyed by fire at Westwego, in the State of Louisiana, on or about the 12th day of November, 1894; but the defendant denies each and every other allegation in the said paragraph or subdivision contained.

Fifth. Said defendant admits the allegation contained in the paragraph or subdivision of said complaint designated fifth, to the effect that it has refused to pay the plaintiff the value of the cotton destroyed as aforesaid, although admitting that it was destroyed by fire at Westwego; but said defendant denies each and every other allegation in the said fifth paragraph or subdivision contained.

Wherefore, the defendant demands that said complaint may be dismissed, with costs.

RUSH TAGGART,
*Attorney for the Defendants, No.* 195 *Broadway, New York, N. Y.*

10 SOUTHERN DISTRICT OF NEW YORK, } ss.:
*City and County of New York,* }

Charles E. Satterlee, being duly sworn, says: That he is an officer of the defendant above named, The Texas and Pacific Railway Company, to wit, the treasurer thereof; that he has read the foregoing answer and knows the contents thereof; that the same is true, excepting as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

C. E. SATTERLEE.

Sworn to before me this 3d day of November, 1895.

B. W. J. FOX,
[SEAL.] *Notary Public, Kings County, N. Y.*

Certificate filed in New York county.

(Endorsed:) United States circuit court, southern district of New York. Louis Auguste Marande, Jules Emile Roederer, Paul Leon Roederer, plaintiffs, *vs.* The Texas and Pacific Railway Company, defendant. Answer. Rush Taggart, attorney for defendant, 195 Broadway, New York. To Evarts, Choate & Beaman, Esqs., plaintiff's attorneys. Service of a copy of the within answer is hereby admitted this 6th day of Jan., 1896. Evarts, Choate & Beaman, attorneys for pl'ff. U. S. circuit court. Filed Jan. 6, 1896. John A. Shields, clerk.

11 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-room, in the borough of Manhattan, in the city of New York, on Wednesday, the 31 day of January, in the year of our Lord one thousand nine hundred.

Present: The Honorable E. Henry Lacombe, circuit judge.

LOUIS A. MARANDE ET AL. }
*vs.* }
TEXAS AND PACIFIC RAILWAY COMPANY. }

Now comes the plaintiffs by Treadwell Cleveland, Esq., their attorney, and move the trial of this cause. Likewise comes the defendant by Rush Taggart, Esq., its attorney.

Thereupon a jury is empaneled and the cause proceeds to trial.

After hearing the evidence for the plaintiffs and the argument of counsel the jury on Tuesday, January 9, 1900, by direction of the court, say they find a verdict for the defendant. Thereupon the court grants the plaintiffs a stay of sixty days within which to make

and serve a case, with leave to turn the same into a bill of exceptions.

(An extract from the minutes.)

[SEAL.] JOHN A. SHIELDS, *Clerk.*

12 United States Circuit Court for the Southern District of New York.

LEWIS A. MARANDE, Plaintiff,
*against*
THE TEXAS AND PACIFIC RAILWAY Company, Defendant. } Judgment, Dated Jan. 3, 1900.

The issues in this action having duly come on to be tried on the second day of January, 1900, before Hon. E. Henry Lacombe, United States circuit judge and a jury, and the trial thereof having duly proceeded on the 3d day of January, 1900, and on the days subsequent thereto, and on the 9th day of January, 1900, the jury having, by direction of the court, duly rendered a verdict in favor of the defendant and against the plaintiff, and the defendant's costs having been duly adjusted in the sum in that behalf hereinafter mentioned: now, on motion of Rush Taggart, Esq., attorney for the defendant,

Ordered and adjudged, that the defendant, The Texas and Pacific Railway Company, recover from the plaintiff, Lewis Marande, the sum of $259.25 *dollars*, defendant's costs and disbursements, as adjusted, and that defendant have execution against said plaintiff therefor.

Judgment signed and entered this 16th day of January, 1900.

JOHN A. SHIELDS, *Clerk.*

(Endorsed:) United States circuit court, southern district of New York. Lewis A. Marande against The Texas and Pacific Railway Company. Judgment. U. S. circuit court. Filed Jan. 16, 1900, 3.55 p. m. John A. Shields, clerk.

13 United States Circuit Court, Southern District of New York.

LOUIS AUGUSTE MARANDE, JULES EMILIE Roederer, and Paul Leon Roederer, Plaintiffs,
*against*
THE TEXAS AND PACIFIC RAILWAY Company, Defendant. } Bill of Exceptions.

Be it remembered that at a stated term of this court, held at the United States court-rooms in the borough of Manhattan, in the city of New York, on Wednesday, the third day of January, 1900, the issues in this cause came on for trial before the Honorable E. Henry Lacombe, circuit judge, and a jury, duly empaneled and sworn, and, thereupon the plaintiffs, by their counsel, having opened their case to the jury, to maintain the issues on their part, offered the following evidence, to wit:

Plaintiffs' counsel offers in evidence a stipulation by the counsel of the respective parties as to the bill of lading, dated March 23, 1897.

Marked Exhibit A (printed *post*, at pp. 245 *et seq.*).

Plaintiffs' counsel offers in evidence the bill of lading covering the cotton in suit, dated October 29, 1894.

Marked Exhibit B (printed *post*, at pp. 248 *et seq.*).

14 Plaintiffs' counsel offers in evidence invoice, dated October 27, 1894.

Marked Exhibit C (printed *post*, at pp. 254 *et seq.*).

Plaintiffs' counsel offers in evidence contract No. 73, referred to in the bill of lading, dated October 27, 1894.

Marked Exhibits D, D 1 and D 2 (printed *post*, pp. 255 *et seq.*).

Plaintiffs' counsel offers in evidence a stipulation dated January 3, 1899, in relation to the subject of jurisdiction and value of cotton, &c.

Marked Exhibit E (printed *post*, at pp. 257 *et seq.*).

FREDERIC E. MYGATT, sworn and examined as a witness for the plaintiffs, testified as follows:

Direct examination by Mr. CLEVELAND:

I am a counsellor-at-law, and one of the assistants of the plaintiffs' attorneys. I have made a computation as to the value of the cotton included in this action. The weight of the cotton, according to the stipulation, is 35,141 pounds. The price current at New Orleans on the date of the bill of lading, October 29, 1894, was $5\frac{9}{16}$ cents per pound; adding one-fourth of a cent for staple, makes $5\frac{13}{16}$ cents per pound. I have multiplied the weight by the price per pound. That makes $2,042.57, the gross value of the cotton. From that I have subtracted the freight at the rate of 75 cents per hundred pounds, which amounts to $263.56; leaving the net value of the cotton, $1,779.01. To that I have added interest from November 12, 1894, amounting to $548.90; making a total of $2,327.91.

15 HENRY L. ZANDER, sworn and examined as a witness for the plaintiffs, testified as follows:

Direct examination by Mr. CLEVELAND:

I reside in New Orleans, and have resided there pretty nearly all my life. I am an engineer and surveyor, and have come here at the request of the plaintiffs in this action. I have made a map of that portion of the Mississippi river in the city of New Orleans, including Westwego; and this is the paper which I now show you.

Plaintiffs' counsel offers in evidence the map referred to, except the printed part.

Marked Exhibit F (inserted *post*, at page 259).

Q. Will you please explain what you have done upon that map in relation to the act of Congress approved March 20, 1896, a part of which purports to be copied upon the map?

A. I was asked to make a map of the city of New Orleans and the adjacent parish, showing the port of entry as referred to by act No. 53 here, a copy of which was given me, as I am a surveyor for the city of New Orleans also; a Government map, which was composed of some of the surveys that were made by ourselves and some of the Government surveys; and then I transcribed on that map the act as here indicated. I colored that portion with a wash, to show the port of entry, which is indicated on the map.

Q. This act reads: "That the limits of the port of entry of New Orleans shall be, and the same are hereby extended so as to include that portion of the parish of Jefferson on the west bank of the Mississippi river lying between the upper line of the parish of Orleans, west bank; the west bank of the said river to a point opposite the upper boundary line of the parish of Orleans east bank, a line drawn thence back four thousand feet, perpendicular to said river, and a line drawn thence parallel to the Mississippi river until
16 it intersects said upper parish boundary line, west bank." That is what you have done?

A. I have done that. I have erected a perpendicular line at the upper boundary line of the parish of Orleans on the east bank, and extended it across the river, and prolonged it four thousand feet; then drew a line parallel with the west bank of the Mississippi river until it intersects the upper boundary line of the parish of Orleans on the west bank of the Mississippi river, indicating all that portion of land in the parish of Jefferson which was entered as a part of the port of entry in this act. They have some portion on the east bank, but that does not refer to the west bank.

Q. Then the yellow portion of this map accurately represents the property described in the act?

A. Yes, sir.

Mr. CLEVELAND: Let it appear that the act was approved March 20th, 1896. That is, two years after this fire the limits of the port of entry of New Orleans were extended. Do you concede as a matter of fact that the east bank of the river in the city of New Orleans is the port of New Orleans and was the port of New Orleans in 1894?

Mr. TAGGART: I concede that, yes.

Mr. CLEVELAND: Do you concede that Westwego was not within the port of New Orleans as defined by the statutes of the United States, in 1894?

Mr. TAGGART: I concede that prior to March 20, 1896, it (Westwego) was not within the designated limits of the port of entry, the customs district, as defined by the act of Congress. That is, of course, subject to objection and exception as to its materiality. I reserve my objection.

ROBERT J. PERKINS, called as a witness for the plaintiffs, testified as follows:

Direct examination by Mr. CLEVELAND:

I am an attorney and counsellor at law, practicing in the State of Louisiana. I have an office in New Orleans. I live just
17 outside of the city of New Orleans, in the parish of Jefferson. I have resided in the parish of Jefferson about sixteen or eighteen years.

Q. Is the parish of Jefferson, where you reside, on the same side of the river as New Orleans?

A. New Orleans is on both sides of the river and so is the parish of Jefferson.

Q. Do you live in any town in the parish of Jefferson?

A. No, sir. It is not a town.

Q. Do you know the place called Westwego?

A. Yes, sir.

Q. Tell me what it was in 1894?

A. Westwego is in the parish of Jefferson opposite the city of New Orleans; that is, across the river. It is on the west bank of the river.

Q. How large a place is Westwego, or was it in November, 1894, and in 1894?

A. There is nothing there except houses that have been built around this railroad terminal. Before the railroad acquired this property, or built its wharves there, there was practically nothing there. Since that time a number of houses have been built and occupied principally by people who work there at the wharves. Before the wharf was built there was nothing there except the mud bank, the levee, which was on either side of the river and goes all the way up along the river to way up above the State of Arkansas. There is a steam ferry across from New Orleans to Westwego. I do not think that ferry was there prior to the building of the docks. To get across the river then you would have to go over in a skiff or a rowboat.

Q. What did the docks consist of in 1894? Give a general description, please.

A. It was a wooden structure built upon piles which were driven on the side of the river. There were two sheds on the wharf at that time. I am not able to state where, prior to the building of this dock, the Texas and Pacific Railway Company had its terminal. The
18 map you now show me approximately represents Westwego as it existed in November, 1894, as well as I am able to judge, as well as I can say that is a good representation of the situation there.

In 1894, at Westwego, there was no other dock, public or private, except the dock of the terminal of the Texas and Pacific Railway Company and this ferry that I speak of.

Cross-examination by Mr. TAGGART:

Q. You have known this wharf how long, Mr. Perkins?

A. I had been there before the wharf was built. I know just when the wharf was built. I think it was completed in 1893. I am telling you that from what I have learned; not from what I remember. I can only say that I remember it was about that time. Whether it was in 1892 or 1893, I am not sure. It was a large structure in 1894. Besides the wharf there is an elevator for the loading of grain and a connection from that elevator down to the water where ships can load.

Q. And it is, to your knowledge, a place of transfer, from the railway to the steamships, of cotton, is it not?

A. From the Texas and Pacific railway?

Q. Yes, and has been since it was built?

A. Ever since the dock was built.

Q. So far as you know, it is the only place of transfer of cotton for export to the vessels from the Texas and Pacific Railway Company?

A. I don't know that fact. I do not know, of my own knowledge, of any other place of transfer of cotton from the Texas and Pacific railway. I know of its being a place of transfer, but, of course, I know of the places in New Orleans where the Texas and Pacific delivers.

Q. Then there are other places where the Texas and Pacific has freight sheds and freight docks?

A. Yes, sir.

Q. But what is done there you don't know?

A. Not of my own knowledge.

19 ROBERT J. PERKINS, recalled as a witness for the plaintiffs, testified as follows:

Direct examination by Mr. CLEVELAND:

In November, 1894, I lived in the parish of Jefferson, above the city of New Orleans—on the other side of the river. I lived on the east bank. I am familiar with the district which now includes Westwego.

Q. In 1894 what was the nearest town or hamlet on the west bank of the river to Westwego—collection of houses or village?

A. There was a place called Amesville, about two miles below Westwego. That only consisted of one store, one grocery store, bar-room and two or three little houses. About three-quarters of a mile further down comes what is called Harvey. That has only two or three stores and some houses. But the nearest village is Gretna, which is the county-seat or parish seat of Jefferson parish, and that I should say was about three miles to three and a half below Westwego. That is on the river as well.

Q. In November, 1894, what police force existed in the district in which Westwego now is and then was?

A. The only police protection there at that time or now is the sheriff and his deputies, and the police elected by the police jury.

The police jury corresponds to the municipal board—county commissioners, I think you call them here. The office of this police jury was in Gretna.

Q. Do you know what was the number of the police force?

A. I think only four or five in the whole parish at that time. The parish had a frontage on the river on that side I should say of twelve miles, and on the other side of about eight or ten miles.

Q. Was there any fire-engine in 1894, engine for extinguishing fires at Westwego or near Westwego?

A. There was none at Westwego. The nearest was at
20 Gretna, from three to three and a half miles away. You asked about police at that point. I might say that the different police officers were distributed over the parish and there was one officer that covered a certain distance along the river front which included Westwego. His beat ran from Harvey's canal up to the upper line of the parish, about five and a half or six miles, I should say.

Cross-examination by Mr. TAGGART:

Q. These police officers lived in the house near the dock?

A. No, sir.

Q. Was not Mr. Gasenberg a member of this police force at that time?

A. No, sir. He was deputy sheriff, without pay. He had no duties, except what he chose to do. This police officer, I think a man named La Brun, at that time lived at Waggaman, at the upper end of the parish, about five miles away.

Q. You say there was no fire-engine nearer than Gretna?

A. Yes, sir.

Q. You mean an engine owned by the municipality, don't you?

A. No; I mean any sort of a fire-engine, that is, either volunteer or paid fire department. They have there only the volunteer department, in Gretna. There are no fire-engines, in the usual sense of the term, anywhere in the parish, except in those towns.

Q. You do not in your answer mean to say that there were no pumping engines there at the wharf?

A. Certainly not. I do not know anything about the capacity of the pumps that were there.

Q. You refer then to either a volunteer or other fire department of the parish?

A. I refer to the fire department, yes.

The WITNESS (referring to the map, Plaintiffs' Exhibit F): Westwego is at this point. Gretna is here. Amesville and Harvey are put on this map by names. There are very few houses there; only one store at Amesville and one or two at Harvey, and they have a name, and I spoke of them.

21 Q. Are they on the line of this railroad running down there on the west bank of the river?

A. Near the railroad, but there is no fire engine at all, that is, no fire department between Westwego and Gretna. The distance

from Gretna to Westwego is about three to three and a half miles I think I am about right in that.

By Mr. CLEVELAND:

Q. What is the distance back from the river front of the parish of Jefferson?

A. It goes 15 or 20 miles in some places.

By Mr. TAGGART:

Q. Back from the river?

A. Yes; at right angles with the river when the river runs north and south.

Q. And this officer that was on this corner of the parish, from Westwego up—how far back did his bailiwick extend?

A. He covered the whole parish. That part of the parish is very sparsely inhabited. It is only in the villages where we had officers at that time—and it is the same now—to any great number. This whole section up here back of Westwego and north of Westwego, and from Westwego down towards Gretna, is largely unpopulated. There is only one plantation between Westwego and Gretna. It is swampy about half a mile back.

Q. The method of access to Westwego is on the east bank of the river, is it not? You come up to a point opposite Westwego, and there a ferry leads across to a point near Westwego?

A. Yes: that is the way of getting at it from New Orleans. Of course from the Gretna side of the river there is a mud road up there—a mud road near the levee; that runs in back a little distance from the wharf, and on up, that is the only thing in the way of road or communication above Westwego.

Q. This point that is marked "company canal"—at the
22 terminus of that is where the ferry landing is, is it not, or very near there?

A. Just above there, yes. The ferry is nearly straight across the river at that point, from New Orleans, and this company canal is about a thousand feet from the wharf, or fifteen hundred. The map will show that. Somewhere around there.

Mr. TAGGART: About 2,000 feet?

Mr. CLEVELAND: Yes.

The WITNESS: This map shows the main line of the Texas and Pacific Railroad Company. I will mark on the map the end of the main line, that is, the north end. The Texas and Pacific Railroad Company approaches New Orleans from the west.

Q. Mark on this map, if you please, what purports to be the most westerly portion of the Texas and Pacific railroad.

A. I mark it "W."

From that point "W" the line runs in a westerly direction towards Texas, and, as shown on the map, in a southeasterly direction, down to a place called Gouldsboro. At Gouldsboro are the yards and shops of the Texas and Pacific, and at that place they have an incline. It is necessary in crossing the river at any point,

the Mississippi river, for a railroad to have a regular incline, so that the cars can get down and the transport boats can come up and the tracks can join. At New Orleans the incline is arranged so that the cars can run onto the transports. That was so in 1894. And in 1894 that was the way that the Texas and Pacific Railway Company got across to the city of New Orleans its railroad freight which it wished to take into New Orleans for any purpose. It does yet.

Q. In 1894, when the cars were run on these transportation boats, where did they go into New Orleans? Will you mark the points?

A. It goes right across the river there to the head of Thalia street.

Q. In 1894 did the New Orleans fire engines cross the river?

A. I don't know of any ever having crossed.

23 C. G. MILLER, called as a witness for the plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

My occupation is freight agent of the Texas and Pacific Railway Company at New Orleans. I am the main freight agent; that is the title. There is a division freight agent and a local freight agent. I am the local freight agent, and was such in October and November, 1894. Prior to November 12, 1894, I had been such local freight agent in New Orleans about three years. I am thirty years old. My office was at the foot of Thalia street in the city of New Orleans. My duties as freight agent were generally in charge of the terminals at New Orleans and Westwego—the Texas and Pacific terminals and the warehouses and yards. The Texas and Pacific Railway Company had in or near New Orleans on November 12th, 1894, warehouses, yards, and other terminals as follows: The freight depot in New Orleans at the foot of Thalia street, in which my office was located, and the cotton shed and sky lot or cotton warehouse—a cotton warehouse known as the sky lot. That is also near the foot of Thalia street. Then we had the yards at Gouldsboro. That is across the river from our terminals in New Orleans. It is not in the city of New Orleans; it is in Gouldsboro, across the river from New Orleans. There are no warehouses over there. We have machine shops there—a round-house, yards containing switches, principally for storing freight but nothing for the storage of cotton. No cotton sheds or docks there.

Besides these warehouses and yards in New Orleans and the places I have described at Gouldsboro we had our terminals at Westwego. Westwego was not built at the time I became freight agent.

It was not built under my supervision, but during the time I was in New Orleans as freight agent.

24 Q. Now give me the names of the persons who were immediately under you, Mr. Miller?

A. At that time, at Westwego, Mr. A. L. Wilkinson was my chief clerk; and there were various employees there directly under Mr. Wilkinson and indirectly under myself. I can't recall the names of

all of them, but I will give you such as I can. Mr. N. G. Figures was chief clerk for Mr. Wilkinson. There was a Mr. Smith, cotton clerk; I don't remember his initials. Mr. Sykes was foreman, and Mr. Trainor—the gentleman here yesterday—was check clerk. There was a party by the name of Baker, also a check clerk. A man by the name of Valle Ruba, who was there, either a check or delivery clerk; a man by the name of Kelly, either a check or delivery clerk. There were the Boylan watchmen, one by the name of Peake, one named Robeau, and one named Schoen. There was a private watchman by the name of Schurb, either a private or Boylan watchman, but I think he was a private watchman. A private watchman by the name of Valle. Those are not all, but all that I can recall at this time at Westwego, aside from the laborers. I do not know the names of the laborers.

Q. Where did you perform your duties of local freight agent, at New Orleans or at Westwego?

A. Principally at New Orleans. New Orleans was the central location.

Q. How many bales of cotton were at Westwego when you were there a day or two before November 12th?

A. Likely to have the same number that were there when the wharf was burnt. About twenty thousand bales. I can't give it to you to the bale. It was not much in excess of twenty thousand, so far as that burnt on the wharf is concerned—probably a few hundred over. About twenty thousand on the wharf and about two thousand in cars are the approximate figures.

Q. When was the last delivery on board a ship at Westwego prior to November 12, 1894—of cotton, I mean?

25 A. I don't know as to the date of that; but during the week previous we delivered cotton.

Mr. CLEVELAND: We may state that November 12, 1894, was Monday.

Mr. TAGGART: Yes.

The WITNESS: I had something to do with employing the Boylan men. Very likely I saw Colonel Boylan at some time prior to November 12, 1894, in the month of November; I do not recollect; I do not recall any specific dates.

Q. Irrespective of the men that were furnished by Boylan's Detective agency, how many watchmen did the railroad company have at Westwego in November, 1894—day watchmen and night watchmen?

A. We had, regularly employed, one day watchman, a private watchman, not from the Boylan office, and one at night. The day watchman employed at the time of the fire was named Schurb. The name of the night watchman was Valle. Mr. Wilkinson was the main man in charge of the clerical force at Westwego. He had been in the employ of the company since along in the early spring of the year 1894, probably February. He was called chief clerk.

Q. Was there any person who was called a superintendent at Westwego?

A. There was a Mr. Roth, superintendent of the Westwego elevator, not of the wharf, however.

Q. I am speaking of the wharf.

A. No, sir; there was no superintendent of the wharf there.

Q. This person in charge there for the railway was this chief clerk, Mr. Wilkinson?

A. That is correct, so far as the party located permanently at Westwego is concerned.

Q. How soon after the fire was Mr. Wilkinson discharged by the company, if at all?

A. He was not discharged.

Q. When were his services dispensed with, if at all?

A. The fire occurred November 12th. It was probably in the latter part of November or early in December.

26 Q. What men familiar with the handling of cotton did the Texas and Pacific Railway Company have in its employ in November, 1894, whom it had in its employment during the previous season?

A. I don't know as to that. We probably had several.

Q. I want you to name one if you can, from memory; if you can't, please furnish me with it. I mean either as to the clerical force or as to general supervision.

A. I can name one man we had. On the outside—he was a sort of foreman; at one time he was chief discharging clerk at New Orleans, and his name was John Driscoll. He was employed in October and November, 1894. He was not at Westwego. He was employed at New Orleans, and is yet.

Q. I will have my question cover both offices—at New Orleans and Westwego—and ask you to state what men the road had in October and November, 1894, either at New Orleans or Westwego, who were familiar, as you understood it, with the handling of cotton, whom the road had had in its employment the previous season?

A. I don't recall that we had any men at Westwego that would come under that, except Mr. Sykes, who was in our employ the previous season.

Q. You have also, I presume, certain reports from Col. Boylan received by the railroad company during October and November, 1894?

A. Not that I know of. The reports furnished in the ordinary course of business we do not retain.

Q. What did you do with them?

A. Put them in the waste-basket as a rule. They were merely in the nature of incidental reports, and we don't make a practice of retaining any of those.

Q. You received a report from Mr. Boylan shortly after November 12, did you not?

A. In regard to the fire?

Q. Yes.

A. Yes, sir.

Q. Did you put that in the waste-basket?

A. No, sir; that was sent on to the auditor at Dallas.

27 Q. Have you a copy of it?

A. I don't know whether I have a copy or not.

Q. Suppose you try to look that up for us, Mr. Miller.

A. Yes, sir.

Q. Is Mr. Valle still in the employment of the company?

A. Yes, sir; I think he is.

Q. And has he been so continuously since November, 1894?

A. To the best of my recollection; yes, sir.

Q. In what capacity?

A. In various capacities.

Q. I wish you would refresh your recollection and see whether he has been continuously in the employ of the company since November, 1894.

A. I think he has; that is, to the best of my recollection.

Q. And in what capacity, I would like to know—I would like to see his account on your books.

A. Yes, sir. He was employed, to my certain knowledge, in the capacity of car-checker and watchman; I remember that distinctly.

Q. Continuously?

A. To the best of my recollection; I wouldn't say that positively; and he was employed for a while at Westwego also, if I remember rightly.

Q. When did you last, prior to November 12, 1894, Mr. Miller, attend a fire drill at Westwego?

A. I don't recollect having attended any.

Q. Never were present on such an occasion?

A. I don't remember it—no, sir.

Q. How many chemical fire engines did you have at Westwego?

A. None.

Q. When did you last, prior to November 12, 1894, have your test of hose at Westwego—I am asking you from your own knowledge, you know.

A. From my own knowledge I can't answer.

Q. You never were present at any test of hose?

A. Well, I was—yes, sir, but not at that time.

Q. Well, how long prior to November 12, 1894, were you there when the hose was tested?

A. Some considerable time; probably the time the hose was being put up there; near that time.

28 Q. When was that?

A. A year or two previous to the fire.

Q. You say two years?

A. Probably to be exact, it was about a year and a half.

Q. When was the dock at Westwego built?

A. It was completed in the early spring of 1893, as I recollect it.

Q. You mean the sheds were completed at that time—the whole structure?

A. The whole business.

Q. And was it then that you were present at the test of hose?

A. I think it was about that time. We did not have any armed force at Westwego at any time during October and November, 1894, except, perhaps, as Mr. Boylan's men may have been armed.

Q. What police protection did the town of Jefferson (the town of Gretna or the parish of Jefferson) furnish to Westwego, if any?

A. I am not familiar with that. I know we had one deputy sheriff furnished by—he was deputized by the parish officials, but was on our pay-rolls. One of our men at Westwego was a deputy sheriff, his name was Schurb, this man of whom I have been speaking.

Q. How far was the nearest fire-engine to your dock at Westwego?

A. I don't know as to that; probably at Gretna. I don't know whether they have any at Gretna. Gretna is about three or four miles from the docks at Westwego, I expect.

There were no policemen near Westwego, as I understand it; not that I know of.

Q. What is Westwego; describe it to me; simply this dock and elevator, is it not, and the ferry?

A. That is the most part of it; yes, sir. In October and November, 1894, I don't think there was but one house within a quarter of a mile of our dock. I can only recall one. There were some within half a mile. I should say probably half a dozen. One was a sort of country grocery store, as I recollect it; plantation store and houses for the accommodation of plantation hands.

29 Q. Perhaps, Mr. Miller, you have a document, or blue print, that you would be willing to produce, of the dock as it exists at present.

A. At present, no, sir, I haven't. I can say, though, it's pretty much the same at present as the old dock.

Q. With the saving exception of the fire apparatus?

A. The fire apparatus is differently arranged now than it was then.

Q. As it existed on November 12, 1894, there was one line of pipe running down the centre of the sheds, was there not?

A. Yes, sir.

Q. And that was all?

A. That was all as to the main line of pipe.

Q. How many hydrants, river or other were in the sheds in November, 1894?

A. There were three in each shed; and each was furnished with a coil of hose. That hose was one hundred feet long. There were six hydrants, or pipes, from which we could draw water on that whole dock in November, 1894. The dock was about eight hundred feet long, and the sheds, I should say, were probably—there were two sheds on the wharf, probably three hundred feet, or two hundred and fifty to three hundred feet would be the length of each shed. They consisted simply of posts and a roof. There were no sides to either one of them. In our parlance we designated the shed down

the river, downstream, at the end of the wharf, as No. 1, that was the one nearest the elevator, and the other as No. 2.

Q. How much space was there of dock or wharf between the upper end of No. 2 shed and the upper end of the wharf?

A. There was probably ten feet.

Q. And how much space was there between the lower end of No. 2 shed and the upper end of No. 1?

A. Probably 100 feet.

Q. I mean between the lower end of shed No. 2 and the upper end of shed No. 1?

A. Well, that would be about, say, a 100, 110 or 115 feet. Between those sheds was an open space which was not planked over.

The COURT: Does he mean no deck plank?

Mr. CLEVELAND: No deck plank; open to the water.

30 This whole structure, this wharf, was of wood. Wooden piles upon which beams or joists were laid, and then a flooring of wooden planks upon which wooden posts were erected which held the wooden roof. This open space between the two sheds was probably 50 or 60 feet in width—by width I mean between the two sheds, and it was entirely crosswise of the wharf; I don't know how long; it was not quite the width of the shed—yes, it just about was the width of the shed. The sheds, I suppose, were 300 feet wide, probably 250 to 300 feet. They were not exactly square. They were longer up and down the river than they were crosswise. I do not know how many posts there were in each shed. Or how far apart the posts were in each shed; probably fifteen feet apart; twenty feet you might make it.

There was one track between the front of the shed and the river. That track ran on the wharf.

Q. The whole length of the wharf?

A. Yes, sir; pretty much the entire length. Between the outer rail of that track and the river the space was probably thirty feet. And between the inner rail of that track and the line of the roof of the shed, probably eight or ten feet; there were two tracks in the rear of the sheds, or towards the land side. They ran the whole length of the dock. They did not run far beyond, but they ran some distance, probably 50 or 100 feet upstream. That was about the terminus of them.

Q. Now, how much wharf space was there, about, toward the elevator, from the end of number one shed?

A. Probably 50 feet from the end of the shed to the end of the wharf toward the elevator. These sheds are about 15 or 20 feet high say at the eaves of the shed. I could not give it any nearer than that.

Q. Did the roofs have a gradual slope, at first, and then when it reached nearer the middle of the shed, was a little more elevated, or was it one continuous sloping?

31 A. It was a slope until it neared the comb of the roof, and then there was a sort of cupola built up independent of the roof. The highest part of that cupola from the dock, the floor of

the dock, was probably thirty feet. The cupola was not open at the sides. I think it was lattice-work.

Q. Lattice-work on the sides?

A. I don't mean by that the cross lattice-work, but something like closed shutters, constructed in that way; window shutters; that cupola was part of the roof. It was really a portion of the roof—that is, it commenced where the roof left off, and then from the upright sides of the cupola, and then the roof of the cupola, together, constituted the roof of the shed. This cupola was probably ten feet wide; fifteen feet maybe. I should judge that the distance from the wharf to the place where the cupola began would be about twenty feet; the perpendicular sides of the cupola.

Now, between the side of the shed or the eave line of the roof of the sheds in the rear, and the edge of the wharf next to the tracks in the rear it was probably eight to ten feet.

Q. Mr. Miller, Col. Boylan has testified that the three watchmen that were on duty at Westwego in the night-time, from November 9 to November 12, 1894, inclusive, were E. Peake, P. A. Robeau and P. Schoen. Did you ever see either of those gentlemen prior to November 12th?

A. Yes, sir, likely I have. I have seen all of the force that there was employed at Westwego.

Q. At night-time? These are the night forces?

A. I was never up there at night. I likely saw them coming and going from there. I may have seen them coming and going. I don't know whether I did or not; I don't know them by name. I wouldn't be able to distinguish them from any others. I was aware, of course, of the labor troubles that existed about this time and some time previously, and I knew, of course, that it was a time of great excitement.

32 Q. How old was Mr. Valle, whom you employed as your watchman?

A. I don't know his age; I should judge though he was 23 or 24 probably. I don't know that his age in November, 1894, was 19. I never inquired; I don't know where he is now exactly; I know he is around the city somewhere. I think he is in the employ of the company now.

Q. How large was this pipe that ran through the centre of the sheds?

A. If I recollect right, it was about a six-inch pipe.

Q. Six inches?

A. Yes, sir.

Q. Isn't it the same pipe that runs there now?

A. I think so.

Q. You don't think that pipe is six inches, do you?

A. I haven't noticed it of late; I know it was a large-size pipe.

Q. What fed it; do you know anything about that—I am not asking you to guess, but I am asking of your knowledge?

A. No, sir; I don't.

Q. Who of your employees had charge of the fire apparatus on the dock?

A Mr. Wilkinson, the chief clerk, for one. He was the main man.

Q The Texas and Pacific road in 1894 was mainly a cotton road, was it not? Its main business was cotton?

A Cotton was probably the largest single commodity that it handled; yes, sir.

Q Have you obtained for me the particulars as to how many bales of cotton were unloaded at Westwego from the 1st of November?

A From the 1st? No, sir; I haven't got that yet; but I have the particulars as to what steamers we delivered cotton to during the week prior to the fire.

Q Please let me have that.

(Witness produces it.)

Q This is what you term a berthing report?

A A report made at the Westwego office to my office daily of vessels at the wharves up there, what class of freight they are taking, &c. The others that I have date from November 5th and cover each day up to and including November 11th. These berthing reports cover the hours of 7, 12 and 6 p. m. on each of the 33 days which they purport to give the particulars of.

Mr CLEVELAND: We will offer the berthing reports from the 5th of November to the 12th.

Marked Exhibit G (printed *post*, at pp. 260, *et seq.*).

The WITNESS: The first column indicates the grain wharf. Then there are two columns headed "1" and "2." They indicate the two cotton wharves—cotton wharf No. 1 and cotton wharf No. 2. Cotton wharf No. 1 was the wharf downstream, towards the elevator. No. 1 wharf, No. 1 shed.

Q There was no break in the line of the wharf, was there, along the river front? It was all one continuous wharf?

A The grain wharf, what we term the grain wharf, ran up and connected with the cotton wharf, the lower end of the cotton wharf. The cotton was all in one continuous wharf but divided arbitrarily by us into Nos. 1 and 2 in accordance with the sheds.

This report of November 5th shows that on November 5th there were loading at No. 1 cotton wharf the steamship Hageen, bound for Bremen, for account of the Elder-Dempster line, and at cotton wharf No. 2 the steamship Straits of Magellan. These figures, total, 2,994, concerning the Hageen, mean that up to and including the 5th of November we delivered to the steamship Hageen 2,994 bales of cotton and 1,908 bales of cotton to the S. S. Straits of Magellan. The report of the 6th shows the loading of them, so far as the cotton wharf is concerned. The report of the 7th shows that the Hageen finished loading at 11 a. m., and had taken up to date 4,729 bales. And the report of November 7th shows that the steamship Electrician, for Liverpool, on account of the Harrison Company, dropped down to No. 1 wharf at 12, noon. That report shows that the Electrician

and Straits of Magellan were loading at No. 1 and No. 2 wharf
34 in the latter part of the 7th day of November. The report for the 8th of November shows that the Straits of Magellan left at 9 a. m. on the 8th of November, having taken 2,997 bales, and that the Electrician was still loading on the 8th of November and that the steamship Malabar came to No. 1 wharf for cotton-seed cake at 1 p. m. on the 8th of November. The report of the 9th of November shows that the Malabar dropped back to the elevator at 2 p. m.—could not load—and that the Electrician was still loading, and left at 12:30 p. m., having taken then 2,413 bales. The report of the 10th of November shows the steamship Elberfeld arriving at No. 2 cotton dock and the Malabar loading at No. 1, the Elberfeld loading meal and cake—cotton-seed meal and cotton-seed cake.

The report of November 11th shows the Malabar moved to the elevator for a tug to make water and the Elberfeld was still loading cotton meal, and the Malabar returned at 6 p. m. for cotton-seed cake on account of Steinhardt & Company.

I haven't got the report of the 12th. I don't imagine it was made. I have no record of it. I judge on account of the fire that things got confused.

Q. Tell me the course of business which the Texas and Pacific Railway Company followed with the Elder-Dempster Steamship Company concerning the shipments of cotton from New Orleans which had been carried by the railroad from points in Texas and brought to New Orleans.

A. You refer now to New Orleans proper or Westwego?

Q. Did you make any distinction?

A. We made this distinction, that the cotton for New Orleans proper was drayed to the ship's side, and the cotton brought into New Orleans at Westwego was placed on the wharf from the cars.

Q. The railroad company in the first place made certain contracts, did they not, with ships or steamship companies?

A. Yes, sir; we made contracts, in New Orleans, with steamship agents for carrying before the cotton would arrive.

35 The Texas and Pacific Railway Company made the contracts for the season of 1894–1895. Very likely with every regular steamship agency here. There was the Harrison steamship line, which I know of, that we had contracts with, and the West India steamship line, Elder-Dempster & Company, Hammond & Company, the French line, or French Commercial line—that line changed its name within the last few years, and I am not sure which name it was going under then; the steamship line for which Miller, Meletta & Company were agents. The G. L. & S., or L. & H. lines were the other principal cotton lines, and there was the Hamburg-American Packet Company handled by the same agency. Those are about all the lines that I am certain we had contracts with. We should have the original contracts with these various lines that I have mentioned, namely, the Harrison line, the West India Company, the French line, Miller, Melatta & Co., G. L. & S. or L. & H., and the Hamburg-American Packet Company.

Q. In addition to these general contracts, this general contract

that you had with Elder-Dempster & Company, you also made from time to time, as the season progressed, did you not, special contracts with the same line—Elder-Dempster & Company?

A. We may have had other contracts with Elder-Dempster & Company besides this contract; oh, yes, we did have; we did have others besides contract No. 44. Those general contracts specified a rate of freight; all contracts did. Letters were not written to the Elder, Dempster Company for each special additional contract. The contracts were usually handled without any letters at all. In fact, it was customary to handle them by making them out in duplicate on a regular printed form, filled out in duplicate, one of which was signed by myself and given to Elder, Dempster & Company, or the steamship company, and the other signed by them, which was retained by myself.

Q. What was the next step toward the fulfillment of this general contract No. 44, or any one of the special contracts with Elder, Dempster & Company; I mean the next step taken by the railway company?

A. Well, the next step, I presume, would be to have the cotton shipped in Texas.

Plaintiffs' counsel reads contract No. 44, which is as follows:

"Original. Form 2370.

Texas & Pacific Railway Company.

NEW ORLEANS, LA., 9, 29, 1894.

Messrs. Elder, Dempster & Co., S. S. line:

I have this day engaged 20,000 bales of cotton for shipment by the Elder, Dempster & Company S. S. line for Liverpool, England, at 49-21 per hundred pounds, compressed cotton, delivery during months October, November, and December, 1894, as per conditions on the reverse side of this contract.

Contract No. 44.

ELDER, DEMPSTER & COMPANY,
By M. & R. WARRINER.

Yours respectfully,

C. G. MILLER,
*Agent T. & P. Railway.*"

MR. CLEVELAND: There are no conditions printed on the back of this contract which are relevant to the controversy now at issue.

Q. What was the next thing that was done by the railway company?

A. Well, on arrival of the cotton here it was unloaded. And after the cotton arrived the Texas & Pacific Company would furnish Elder, Dempster & Company notice of arrival.

Q. What was the next step after you sent a transfer slip to the steamship company?

A. Then it remained for the steamship companies to take delivery of the cotton—send a steamer to Westwego and get it.

Q. Would you receive from the steamship company before the steamer arrived at the dock any paper?

37 A. Yes, sir; ordinarily we would receive—usually the transfers would be returned to us, either endorsed on the face of the transfer by the steamship agents to deliver the cotton to a certain steamer, or a letter of transmittal returning the transfers. Either practice was in effect.

Q. The practice was for the steamship company to return you your transfer slips which you had sent to them with certain particulars filled in by the steamship company, indicating what lots of cotton the steamship company was ready to take delivery of? Is that the fact?

A. Yes, sir; ordinarily that was the case.

Q. Then what was the next step?

A. The next step was for the steamer to go to Westwego and take charge of the cotton. Upon the arrival of the vessel at the dock the employees of the railway company at Westwego would, in company with some one of the ship's employees—the mate, probably—go around and count the various lots of cotton that were there, and the mate would give us what is termed a "mate's receipt" for that cotton before loading it on the vessel.

Q. And at or shortly prior to the arrival of the steamship the cotton designed for that steamship would be brought out on the dock by the railway employees, would it not?

A. Not necessarily. That would depend upon where the cotton was, and in a number of instances the mate of the steamer would receipt to us for it, and the steamship laborers would truck the cotton from where we had it on the dock to the vessel.

Q. What period of time usually elapsed between the receipt by the railway company of the transfer slips from the steamship company and the arrival of the steamer at the dock at Westwego?

A. Well, that would all depend—at times the transfer slips were returned to us before the steamer would arrive. At other times the steamer would be in the river at some city wharf expecting to go to Westwego the next day or several days after. At other

38 times the slips were probably returned the same day the steamer went to Westwego.

Q. What was the object of the steamship company returning to you the transfer slips?

A. Well, to designate the quantity of cotton they might want aboard a steamer and what particular cotton—at times.

I don't know how many chemical fire buckets there were at Westwego on November 12, 1894. I know that we had chemical fire buckets there, but I don't know as to the number.

Q. What is a chemical fire bucket?

A. It's a structure in the shape of a pail, closed as to the sides and bottom, encased in a tin or zinc case with a handle to it like an ordinary pail or bucket—some such style as that. The top of the bucket was covered with tin foil, that is, after the chemical liquid was placed in it. That was covered over by a row of tin foil, and then there was a sort of top to fit over that head of the same mate-

rial as the tin or zinc case; that cap set loosely over the tin foil so that it would be readily moved and the contents used. On November 12, 1894, there were some of those buckets on the dock at Westwego. I do not know how many. I have seen some there numbers of times. About every time that I was up there. The railway company bought them from a man by the name of Edwards, who was the agent here. They were bought probably two and a half years prior to the fire, or in 1893, possibly, or it may have been in 1892. It would be next to impossible for me to look up the memoranda of the purchase, for this reason, that I did not make the purchase direct; the purchase was likely made through our purchasing department or the general manager's office. All I know is that Mr. Edwards, the agent for these buckets, if I recollect right, brought the buckets up, and I met him several times since that, and he has had some conversation with me as regards the buckets.

Q. The documents which you showed me the other day
39 and which you call berthing reports show that there was room, as I understood them, for two vessels to load at the cotton docks. Is that right?

A. Yes, sir; two vessels with key berths; what we term inside or key berths.

After our receipt from the steamship company of these transfer slips with marks of lots of cotton upon them, if it should be necessary to get out the cotton that was mentioned on them, that would be attended to by some of the employees at Westwego—the railway employees at Westwego, as to locating the cotton and getting it out. It was not necessary to get it out at all times.

Q. Where was it?

A. On the wharf.

Q. What part of the wharf?

A. It was all over the wharf.

Q. Inside or outside of the railway tracks?

A. Usually stored, and inside of the railway track toward the land. I don't know that I issued any specific orders in respect to getting out that cotton to any one. It was understood that we would get out cotton when necessary to do it. By getting out cotton I mean trucking it from where it was originally stored on the wharf, out say in front or near enough in front to enable the steamship people to get it out without having to go around other piles of the cotton. When it was done at all, it was usually done after the receipt of these transfer slips from the steamship company.

Q. Was it usually done?

A. That would depend on the location of the cotton on the wharf. In some instances it was done and in some instances it was not done. I do not mean necessarily that before the receipt of the transfer slips from the steamship company the cotton that was destined for a steamer was put between the sheds and the river. I simply mean that if cotton which Elder, Dempster & Company, for instance, sent a steamer there to get; if it was where they could get at that cotton, if there was no obstruction of any consequence between where this

cotton was stored that they went there to get and the ship's
40 side, that in that case we had nothing to do with getting it out; they took it from where it was located.

Q. How much of your time did you spend at Westwego?

A. I can't say as to that.

Q. On the average an hour a day?

A. No, sir; not throughout the season. Sometimes it would happen that I was not there for a week; not at that period, however. Taking the twenty days prior to November 12, 1894, I was probably at Westwego six or seven times, maybe oftener. During those six or seven times, I can't say what was the average duration of my visits, it may have ranged anywhere from half an hour or an hour up to three or four hours.

Q. Do you recollect at any time spending three or four hours at Westwego in the three weeks prior to November 12, 1894?

A. No, sir; not specifically. I was at that time a very busy man, that was at the height of our cotton season. And during that cotton season a very large crop had been produced, and the railway company was receiving a very large number of bales of cotton.

Q. Have you figured up for me, Mr. Miller, how many bales of cotton were unloaded from cars at Westwego between the first day of September and the 12th of November, 1894?

A. No, sir. The request as to that was made from the 1st to the 12th of November, and I have that here.

Q. State to me how many between the 1st and the 12th of November.

A. I give it to you as to dates, and state that I am now refreshing my recollection and referring to the reports I have before me.

Mr. CLEVELAND: We offer these reports in evidence.

Marked Exhibit H (printed *post*, at pp. 267 *et seq.*).

These are tissue copies of daily reports made to myself by the Westwego office. On November 1, 1894, we unloaded on the
41 wharf 1,692 bales of cotton. The report which I now produce, and which runs from November 1st to the 12th of November inclusive, gives all the information which I received at that time on the subject. Our daily report of the 12th of November, 1894, which you show me, shows that there were on that date on hand in cars at last report 145 cars carrying 5,245 bales; and that there were received on November 12th, 65 cars with 2,760 bales in them. So that there were on hand at the close of the day's business, apparently, from that, 210 cars. That there were none unloaded on the 12th, and that there were on hand that night 206 cars with 8,000 bales in them, and that there were on the dock that night 20,879 bales, and that there were none loaded on a steamship that day. That the total receipts "this season" were 64,316 bales, and the total delivered on steamships 34,764 bales.

Q. What does this mean at the end of these daily reports concerning insurance reports?

A. That has reference to the number of bales on hand consigned via each particular line. It is called an insurance report for the

reason that we telegraph our auditor in Dallas, Texas, each day as to the number of bales of cotton on hand. I don't know for what purpose. I have never heard. I presume it had some connection with the matter of insurance; I don't know.

Q. Will you show me the report that you sent on November 12 to your auditor at Dallas, Texas—your letter-press copy of it?

A. Those reports are sent from the Westwego office. I don't know whether I have a letter-press copy of it or not. I have our letter-press copy book here that we kept at Westwego. That report being a telegraph report, I do not know that it would be copied in my office record book. That would not ordinarily be kept here, I should not imagine; that was in the nature of a telegram, and the telegraph office was located up in the elevator office. I expect, however, that this is it.

I produce letter book, which will be marked for identification Plaintiffs' Exhibit 49, and refer to page 310 which reads:

42 "C. G. Miller, New Orleans, La., Westwego office, 11, 12, '94, R. Fenby, Dallas. On wharf tonight 250 bales local cotton; 21,448 bales through cotton; 125 sacks c/s cake;" and those are my initials, signed by Mr. Figures. That is a sample of the telegrams that were sent daily by the Westwego office to Mr. Fenby at Dallas, so that he knew exactly what cotton we had on hand every day.

Q. Letter-press impression of the daily report of the 10th November "Plaintiffs' Exhibit No. 47" being rather indistinct I will ask you to interpret it, so that the stenographer can take it down?

A. It was designated as a cotton report. "On hand in cars last report 114 cars, 4164 B/C. Received today 18 cars 589 B/C. Unloaded today 8 cars 274 B/C. On hand tonight 124 cars 4479 B/C. Delivered to steamship today none. Total receipts this season 60,765 bales. Total receipts last season 45,033 bales. Total increase this season 15,732. Total delivered steamships this season 34,764. Forwarded to New Orleans 668 bales." "Insurance report, steamship 9, destination on the cars." Immediately after the words "on the cars" it is indistinct, but it looks more like 125 cars than anything else. The numbers under the heading "Insurance reports" are so blurred that I cannot read them. The names of the steamship lines are in the same order as the report of November 12. The destination in the same order as on November 12th; and under the heading "on cars" opposite "Havre" 4081; opposite "Liverpool" 314 bales; opposite Harrison line, Liverpool, nothing; opposite "E. D. Line, Bremen," 84 bales, and local 250.

This report of November 12, 1894, states that we unloaded no cars on that day. I know nothing to the contrary of that; and that we only unloaded eight cars of cotton on November 10th which was Saturday. I know nothing to the contrary of that. The number of bales delivered to each steamer from November 1st up to the 12th appears on the second sheet of these daily reports that I have produced.

43 You wished to know what force we had employed at Westwego in November, 1894, that we had previously had in our

service exclusive of the laborers. I have had the pay-rolls examined and I have them here also with the following report. Sykes, who was foreman at Westwego in November, 1894, was previously employed by the company during previous seasons. J. A. Coffey was also previously employed, that is, employed in previous seasons prior to the season of 1894–'95. Those are all the names that appear on the rolls—on the Westwego rolls—as parties who were employed at Westwego, in all except the capacity of laborers, that had been employed by the company in previous seasons, with the exception of Mr. Wilkinson, whose employment dated from the early portion of 1894. He was first employed about the month of February, and he remained in the employment of the company after the fire; up to about the early part of December. He was employed by the month.

Q. Then since November he was dismissed, was he not?

A. No, sir, he was not employed by the month—I mean he was paid at the rate of so much per month. There was no obligation, however, as to his remaining in the service any full month; he was not dismissed. He was dismissed, discharged or let go early in December, perhaps; probably the first week in December. I don't know how near the first. I can refer to the books. It is my understanding that he has since been in the employment of the company in Texas. I know of his being, I think it was, at Clarksville, Texas, also at Paris. I don't know when he was re-employed. The railway company did not own any steam-tugs, to my knowledge; they did not have any boats at all at Westwego of any kind. I do not recollect how the planks which composed the floor of the wharf, as it existed prior to the fire, were laid; I do not remember whether they were laid crosswise or lengthwise.

44 Q. Were they laid close together, I mean, or were there cracks between them?

A. Well, there may have been. It was the intention to put them close together, and they were put that way.

Q. Laid in juxtaposition, you mean?

A. Closed up like——

Q. Like the floor of a house?

A. No, not like the floor of a house—not tongue and groove—but the ends of the planks were squared off. This cotton which we received at Westwego and which was destroyed by fire was all compressed cotton.

In the case of Louis Auguste Marande *versus* The Texas and Pacific Railway Company I have and produce the following waybills: Nos. T. 70, T. 71, from Greenville, Tex., to New Orleans, dated October 31, 1894.

Plaintiffs' counsel offers in evidence waybill T–70, stamped across the face "Set out at Westwego."

Marked Exhibit K (printed *post* at p. 279).

Plaintiffs' counsel offers in evidence waybill T–71, stamped across the face "Set out at Westwego."

Marked Exhibit L (printed *post* at p. 280).

Mr. CLEVELAND (to Mr. Taggart): Will you state the dates of arrival?

Mr. TAGGART: The two cars covered by those waybills arrived in Westwego the 7th of November, 1894. There were 36 bales in one car, that is under waybill 70, and under waybill 71 there were 29 bales in the other car. Both cars arrived on the 7th of November.

The COURT: They now concede that it was November 7, 1894. Mr. Taggart has conceded that it arrived November 7, 1894.

By Mr. TAGGART: On November 12th the cotton was in the cars and not unloaded.

The COURT: Thirty-six bales in one and twenty-nine in the other at the time of the fire.

45 It is stipulated by counsel that the course of business between the steamship lines and the defendant was as follows: This wharf was at the terminus of a branch of the defendant's line of railway on the bank of the Mississippi river, and was built out over the river far enough so that cars could be run upon the tracks in the rear of the wharf and unloaded and vessels come to the front of the wharf and receive the freight thus unloaded. It was controlled exclusively by the defendant, and used by it for the temporary storage of freight of all kinds brought over its railway and awaiting delivery to the consignees or for transportation by vessels. Upon the shipment of the cotton in Texas bills of lading would be issued to the shipper. Thereupon the cotton would be loaded in cars of the defendants and a waybill giving the number and initial of the car, the number and date of the bill of lading, the date of the shipment, the names of consignor and consignee, the number of bales forwarded on that particular waybill, the marks on the cotton, the weight, &c., would be given to the conductor of the train bringing the car to Westwego. Upon the receipt of the waybill and car at Westwego a skeleton would be made out by the defendant's clerks at Westwego, for the purpose of unloading the car properly, containing the essential items of information covered by the waybill and the date of the making of the skeleton. When this skeleton had been made out and the car had been sidetracked at the rear of the wharf, the skeleton would be taken by the defendant's check clerk, and he would proceed with a gang of laborers to open the car. The cotton would then be taken from the car, examined to see that the marks corresponded with the items upon the skeleton, and deposited in one of the sheds upon the wharf designated by the check clerk, and the check clerk would mark upon the skeleton the location of the cotton. The sheds were

46 subdivided into fifteen sections, and the location of the cotton was left to the check clerk. The skeleton would then be transmitted to the general office of the defendant, and the defendant would make out a "transfer sheet," containing substantially the information contained in the waybill, and transmit the transfer sheet to the steamship line. The steamship lines upon receiving the "transfer sheet" understood that cotton for their vessels was on the wharf at Westwego, and would collate the transfers relating to such cotton as was destined by them for a particular vessel, return

the transfer sheet to the defendant, and advise defendant what vessel would take the cotton. Thereafter the steamship company when it was ready to take the cotton would send the vessel with their stevedores to the wharf, the defendant's clerk would go with the master of the vessel and identify and count out the particular lots of cotton designated for his vessel, the master would O K them, and the stevedores would thereupon take the cotton and put it on board the ship. Before the cotton left the wharf the defendant would obtain a receipt for it from the master of the ship.

Mr. CLEVELAND (to Mr. Taggart): It is stipulated in this case that the cotton was never taken out of these cars; that it reached Westwego on November 7th, and, therefore, that no transfer sheets respecting the cotton in suit, and no notice of its arrival at Westwego, were ever sent to the steamship company? That is right?

Mr. TAGGART: Yes.

Plaintiffs' counsel continues reading from the deposition of Mr. Miller.

Q. Where is Elder-Dempster Company's wharf, or where was it in November and October, 1894?

A. One wharf they were using was the Westwego wharf, belonging to our company. They were using another wharf in New Orleans.

Q. Where was the Elder-Dempster Company's wharf, was my question, Mr. Miller, if you know?

47 A. They were using two wharves; they did not own any wharf, as I know of.

Q. Where was the wharf that they used?

A. They were using a wharf on the city's front, immediately above Jackson street, as I recollect. That is in the city of New Orleans. I think it was generally known as Elder, Dempster & Company's wharf.

Q. Mr. Miller, you recollect receiving from Colonel Boylan, or one of his officers—either the major or the lieutenant of the agency—reports concerning a fire that took place on your dock on October 23d?

A. Yes, sir; I remember I did receive reports.

Q. But that report I am speaking of, concerning that fire on October 23d, I think it was?

A. I don't remember that specific instance.

Q. You recollect my reading a report, here, in evidence, from Colonel Boylan's agency to you concerning a fire on October 23d, do you not?

A. I remember in regard to a small fire, but I am not sure as to the date, "October 23d"—but previous to the fire of November 12th—I remember that. I also remember receiving Colonel Boylan's report as to Mr. Wilkinson's firing a shot at a dog on the dock. That was before the fire, also.

Defendant's counsel reads from the deposition of Mr. Miller, as follows:

Cross-examination by Mr. TAGGART:

Q. You were inquired of respecting Elder-Dempster & Company's wharf in the city of New Orleans. Was it the custom of the Texas and Pacific Railway Company to ever deliver cotton to Elder-Dempster & Co. at that wharf?

A. At times.

Q. That is, what kind of cotton, or nature, or sort of shipments, were delivered to Elder Dempster & Co. in New Orleans?

A. Practically the same class of cotton as that we were handling at Westwego; but it was not the custom to make deliveries at that wharf of Elder-Dempster & Company in the city at that
48 time. At that time we were handling their business at Westwego.

Q. And for how long a time had you been handling it at Westwego?

A. Probably for a month or a month and a half previous to the fire, as to that particular season of 1894–'95. It had been so handled the previous season at Westwego.

Q. Was there any other recognized place of connection between Elder Dempster & Co.'s line of steamships and the Texas and Pacific Railway Company than Westwego at and prior to the time of the fire?

A. No, sir.

S. V. FORNARIS, called as a witness on behalf of the plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I live in New Orleans. I am president of the Union national bank and steamship agent for the French line. The name of my firm is S. V. Fornaris & Co. The firm of S. V. Fornaris & Co., steamship agents, has been in existence about eighteen years here in New Orleans. And I have been a member of the firm all that time. I was in that business in 1893 and 1894. I have always represented that line since I came here. At first it was the Commerciale line.

We have particular terminals here, wharves or docks, for our line. They are at the foot of St. Andrew and St. Mary streets. They were there in 1894; it was there since 1884 or 1885; I don't know exactly. We have no other dock here besides that.

Q. What business, Mr. Fornaris, was that line engaged in in 1894?

A. Carrying freight from New Orleans to Havre, specially.

Q. What kind of freight?

A. Cotton, oil cake and the products of cotton, lumber, grain and general freight.

49 Q. Did your line, in 1894, receive freight or cotton at any other docks than your own?

A. Yes, sir; we went to take freight from other docks. I am familiar with the customs and usages existing in this port, as to

the shipment of cotton to various ports in Europe, and I was familiar with such usage and custom in 1894.

Q. I believe you stated you had some vessel loads at Westwego?

A. Yes sir.

Q. Under what conditions, if any, Mr. Fornaris, did your vessels go to Westwego?

A. Whenever there was a sufficient quantity of freight to justify my sending a vessel over there.

Q. Well, what quantity of cotton in 1894 justified your sending a vessel over there?

A. Nothing less than 1,000 bales. If the Texas and Pacific had less than 1,000 bales to ship on our line in 1894, delivery would have been made to us at our wharf on the New Orleans side of the river.

Q. Do you mean, Mr. Fornaris, that in 1893–1894, you would not send a vessel to Westwego for less than 1,000 bales of cotton?

A. Yes, sir.

Defendant's counsel reads from the cross-examination of Mr. Fornaris as follows:

Cross-examination by Mr. TAGGART:

Q. Mr. Fornaris, did you have any bookings of export cotton with the Texas and Pacific railroad, which is involved in the Westwego fire suit?

A. I don't know that I have any. I had some bookings for the Texas and Pacific outstanding at the time of the fire. I had some cotton booked, that was burned on the other side. But whether it was cotton involved in New York suits, I don't know, because I don't know which is the cotton involved in that suit.

This booking of cotton was export cotton for Havre, which, I suppose, the railroad company went into Texas and engaged from the shipper, based on our ocean rate and the rail rate from there
50 to New Orleans. That's the way business was done, I suppose. And I received that at Westwego.

Q. Under those bookings that was the understanding, was it not, after the wharf at Westwego was built?

A. Yes, sir; whenever we went to Westwego to take cotton—spot cotton—but I cannot remember positively about this, because I thought the steamship was in New Orleans, on the New Orleans side, and the cotton was to be delivered at my wharf in New Orleans, and yet it was burned on the other side.

Q. You don't know whether that cotton was involved in these suits in New York?

A. I know it was cotton destined to the Canaries, to be delivered on the New Orleans side of the river, and the cotton was burned at Westwego. That was a special arrangement as to point of delivery, and the point of delivery was at my wharf. I don't know who it was who shipped the cotton; I could — by referring to my office. I don't know the consignee, but I can — by referring to my books.

Q. Do you know the amount of cotton?

A. A few bales; not many. I don't know whether that was the entire amount of booking I had with the Texas and Pacific at the time of the fire. I can't recollect. I don't know whether there was any more cotton for my ship or not.

Our line was accustomed to go to Westwego as well as to other wharves where freight was to be delivered—where we could get freight—whenever there was a sufficient quantity to justify our going there. Under a previous arrangement with the Texas and Pacific, we made an engagement with them that if they had so many bales we would go there to take them. But we only made these arrangements to go there under those circumstances, and if there was not enough to justify me I would not send a ship there. I would not send a ship anywhere for ten bales of cotton. There had to be a sufficient amount of cotton to justify me in sending for it.

51 That was true at Westwego, Southport, on this side, Algiers, or anywhere.

In respect to this cotton I speak of being delivered, it was a small amount of cotton, maybe 15 or 20 bales. I think it was on an export bill of lading, on a through bill of lading, destined to the point of destination, which was the Canaries, and the steamer signed under a through bill of lading; that is my recollection.

ALEXANDER HARRIS, called as a witness for the plaintiff, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I was born in 1843; am 56 years of age, and have lived in New Orleans since I was four years old; my residence is at the corner of Esplanade and Bourbon, and I was since 1885 a partner of Mr. Moulton, and since 1895 I have been the agent of the Cromwell Steamship Company. Prior to 1895 I was still in the same business, steamship agent. I am not familiar with Westwego; I never went over there. I never heard of a vessel discharging or receiving freight at Westwego prior to the erection of the dock of the Texas and Pacific Railway Company. There was no commercial business done there prior to the erection of these docks.

I am familiar with the port of New Orleans.

Q. Prior to the erection of this dock, did you consider Westwego as being, commercially, in the port of New Orleans?

Objected to as calling for an opinion simply. Objection sustained. Exception by plaintiffs.

Q. In November, 1894, did you consider Westwego as being commercially within the port of New Orleans?

A. I tell you that from my own knowledge I cannot answer it, because I paid but very little attention to it.

52 Q. If your line brought any freight here consigned to New Orleans, Mr. Harris, would you, in 1894, consider that you could have delivered it at Westwego, and that that would have been a delivery such as was contemplated under that bill of lading?

A. No, sir. Our line of vessels handles cotton from New Orleans. Our wharf in New Orleans is at the foot of St. Louis street. We handled cotton in 1894. We have received thousands of bales of cotton over the Texas and Pacific railway. Delivery at that time was made right at the switch at our landing. We received cotton in 1894, from the Texas and Pacific Railway Company. And it was delivered then at the same place in the cars, and we discharged the cars. That is at our wharf.

Q. How long subsequent to the erection of those docks did ships first begin to go there for cotton?

A. Well, really, I will tell you frankly, that I cannot exactly answer. I only know that after the erection of the docks, why there was a pretty good traffic done over there, and as to dates I can't tell you anything about it.

Defendant's counsel reads from the deposition, as follows:

Cross-examination by Mr. TAGGART:

The Cromwell line of steamers, of which I was the agent in 1894, runs regularly from New Orleans to New York; New York is the other terminus of the line.

Q. And the cotton that you carried is cotton for New York, is it?

A. No; cotton destined for any place; for instance, Europe, or generally the eastern mills.

Q. Now, does that cotton come here on local bills of lading over the Texas and Pacific Railway Company?

A. Under through bills.

Q. Under an arrangement for a division of the through rates?

53 A. Well, it is a prorate, the steamship getting its division of the rate. That is, it is a through rate from the point of shipment to the New England mills.

Q. It does not come on a booking, such as is made for cotton to Liverpool, nothing of that sort?

A. No, sir.

Q. It is on a mere percentage of the through rate between the different railroads?

A. Exactly, and not as to quantity. And the Texas and Pacific Railway Company takes its proportion of that through rate, and the Cromwell line will take its proportion. That comes in car-load lots to New Orleans, and is delivered to our line.

Q. Your line happens to be near a switch of the Texas and Pacific Railway Co.?

A. The switch is more of a Louisville and Nashville Railroad switch, and the Texas and Pacific make delivery in there, and it comes down over that switch direct to us, the Louisville and Nashville making such switching down to our dock.

Q. The Louisville and Nashville gets a certain switching charge out of this through rate?

A. They get so much a car. And the switch charge, whatever the through rate may be, is based upon the number of cars handled.

It is an arbitrary switching charge. That switch brings the car down to our dock. And delivery is made there, so far as our line is concerned. Our line did not, either in the case of the Texas and Pacific or the other railway companies, go to their docks to get the cotton. In the case of all the other cotton delivered from other railways, it was through a switching arrangement similar to this and brought to our wharf, or by floats or by drays.

Q. So that you know nothing about foreign export cotton and like things handled in New Orleans, and you handle none of that except as it may happen to come to New Orleans and be reshipped over your line?

A. That is all.

54 JOHN G. WOODS, called as a witness for the plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

My name is John G. Woods. My business in New Orleans has been that of commission merchant for the past ten or eleven years, engaged exclusively in the Central American fruit trade.

Q. Has the company with which you have been connected ever been the agent of any line of steamships or handled or chartered any steamships?

A. Have been handling steamers constantly in the Central American trade. I am familiar with the importing business in New Orleans from Central America.

Q. Have you been to Westwego where the docks of the Texas and Pacific Railway Company are?

A. Personally, I have never been at Westwego.

Q. As a merchant connected with the importing business here, would you say that, in 1894, Westwego was considered, commercially speaking, within the port of New Orleans, within the port of entry of New Orleans?

A. No; I would not.

Our company handles fruit very largely, and that fruit comes consigned to New Orleans.

Q. Could a delivery of that fruit in your estimation made in 1894, at Westwego, have been such a delivery as was contemplated under that bill of lading?

A. No. I should say it would have to be brought to the New Orleans side of the river.

Q. Would you have received a delivery made there without a protest?

A. By no means.

Defendant's counsel reads the cross-examination of this witness as follows:

Cross-examination by Mr. TAGGART:

Q. Mr. Woods, you are considering this question from the standpoint of your particular business, the fruit business, are you, and

the receipt and delivery of fruit? You don't know anything
55 about the business at Westwego in respect to other lines for importation and exportation, do you?

A. No, sir, I am entirely unfamiliar with Westwego.

Q. You say that in the delivery of fruit consigned to you to the port of New Orleans, you consider that to be on the New Orleans side of the river?

A. That is the idea.

Q. An attempt to deliver at Algiers, which is right across the river, would be equally objectionable, in your opinion, wouldn't it, so far as your business is concerned?

A. So far as my business is concerned, it would have necessarily to be delivered on the New Orleans side of the river.

Q. Algiers is a part and was a part at that time of the port of New Orleans, according to the act of Congress, that is in 1894, was it not?

A. That I am not sure of, but in either case I would not consider a delivery on the other side of the river of goods consigned to me at the port of New Orleans as a delivery at the port of New Orleans. Regardless of whether it was within the limits fixed by the act of Congress or not. I am not considering that feature of it at all.

Q. You are considering it solely from the standpoint of your line of business and not from that of any other business?

A. I would consider it, if it comes to a question of discussion, I would consider it objectionable and not a delivery at New Orleans, if goods were delivered on the other side of the river.

Q. In any line of business?

A. In any line of business.

Q. But particularly you are viewing it from the experience you have had in your business as a fruit merchant?

A. That goes without saying.

By Mr. CLEVELAND:

Q. Would you say you were familiar in 1894, with the custom in vogue here for the delivery of goods consigned to New Orleans?

56 A. Well, no, sir; I couldn't say that I am; the delivery of general goods and the consignment of these goods is a matter entirely out of my line of business and I pay but little attention to it; have given little thought to it.

By Mr. TAGGART:

Q. How would it be in the case of a consignment of fruit to New Orleans and, thence, by the Southern Pacific to Houston, Texas, for instance, a through shipment on a through bill of lading, would you consider that it made any difference whether the goods were delivered from the ship to the Southern Pacific Company on the New Orleans side of the river or on the Algiers side of the river?

A. As far as transportation is concerned, it would make no difference, it would be then a mere matter of detail, handling and expense, and the grade of the goods, and it would be preferable on the

New Orleans side of the river; but in this fruit business, that is entirely beyond the pale of possibility; the fruit business could not be done in that way. It is a peculiar line of business, and must be handled in cars all at once, because it is a perishable article, and has to be handled carefully and skillfully. I say that none of our business is changed at all; it is all delivered on the New Orleans side of the river, and the cars are switched over the various lines of railroad for which they may be intended, and the loading is done at the Northeastern fruit wharf, and at the Illinois Central fruit wharf at the foot of Thalia street. I am speaking now of the fruit business with which I am acquainted. Of the other lines of business I am completely ignorant, except in a general business way.

57 L. C. FALLON, called as a witness for plaintiffs, testifies as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am sixty years old; a coffee and commission merchant, and my residence is in New Orleans. I have been engaged in that business about thirty-eight years. I am not very familiar with Westwego.

Q. You are an importer of coffee, Mr. Fallon?

A. Yes, sir; I import some coffee; that is not the principal business I do in coffee, though; I am importing for myself and for others.

I say I am not very familiar with Westwego. I have been to Westwego a few times.

I do not remember when the dock of the Texas and Pacific Railway Company, which was burned in 1894, was built.

Q. Did you ever know of vessels to discharge or receive freight at Westwego?

A. Yes, receiving freight; I never had anything to do with the discharging of freight.

Q. When first did you know of a vessel receiving freight there?

A. For myself I have shipped cross-ties—bought cross-ties up the railroad, and had them brought and delivered at Westwego by contract.

Q. Do you know whether or not any commercial business ever was done at Westwego prior to the erection of this wharf?

A. No, sir.

Q. You are familiar with the port of New Orleans, Mr. Fallon?

A. Yes, sir.

Q. Prior to 1893, did you consider Westwego as being commercially within the port of New Orleans?

Objected to as calling for an opinion. Objection sustained. Exception by plaintiffs.

Q. In November, 1894, did you consider Westwego as being commercially within the port of New Orleans?

58 A. Well, really, I don't know whether Westwego is a part of the port of New Orleans today. I never would accept

delivery of a cargo of coffee there. If a shipper of coffee was to send me a cargo of coffee for delivery at New Orleans, and it was delivered at Westwego, I wouldn't consider it brought to the port of New Orleans. I never knew of the delivery of any goods consigned to the port of New Orleans, at Westwego.

Q. When, first, to your knowledge, was any commercial business done there?

A. I don't know of any business but my own. I have had nothing to do with Westwego.

GEORGE R. WESTFELDT, called as a witness for plaintiff, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am forty-eight years of age, reside in New Orleans, and am a coffee merchant; I am familiar with the port of New Orleans for coffee purposes.

Q. In 1894, did you consider Westwego as commercially within the port of New Orleans?

A. Not for coffee purposes.

MATTHEW WARRINER, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

Q. Mr. Warriner, what is your occupation?

A. Representing the Elder-Dempster Company—steamship agents. I have been representing the Elder-Dempster steamship lines at New Orleans since 1892.

Q. Where, in 1892, was the dock of the Elder-Dempster Steamship Company in New Orleans?

59 A. We were allotted a wharf at Jackson street, and we retained that wharf during the season of 1892–'93, and 1894–'95, and up to the present time.

Q. Did you have any other dock in the port of New Orleans?

A. We have loaded vessels at other docks.

Q. But you have had no other leased or special dock?

A. No, no other special dock. This is a grant from the city; that's a special privilege—grant. It isn't our dock, but a special privilege to land there; it is known in New Orleans as the Elder-Dempster Company's dock.

Q. During the season of 1893–'94, the season before the fire at Westwego, did you receive cotton from the Texas and Pacific Railway Company—at that time?

A. I think we did. I couldn't tell how much it formed, only very approximately, but it would run into the thousands, I should think.

Q. Did you receive any at that time from the Texas and Pacific Railway Company—during the season of 1894–'95, do you recollect?

A. Yes, sir; a considerable quantity.

Q. And how was that cotton delivered to the Elder-Dempster Co.'s line, at New Orleans, in the season of 1893–'94?

A. By dray.

Q. And the same during 1894–'95?

A. By drays and barges. We, also, during the season of 1894–1895, sent some of our steamers to Westwego to load.

Q. Will you please to explain to me the custom that existed in the season of 1894–'95, that is, in October and November, 1894, in relation to the loading of cotton at Westwego?

A. We just sent our ships there, to get whatever was ready for delivery and sign for it.

Q. What was the first step in the process?

A. Oh, we would try and find out how much there was there for us, that they were ready to deliver.

Q. Did you receive written notifications on the subject?

A. We received, from time to time, what they call transfer slips, which we took to be notifications of the arrival of cotton and
60 readiness for delivery. Our custom in relation to these transfers was to return them to the railroad with the order to deliver to a specific steamship either at Westwego or about due at Westwego.

Q. Having received these transfer slips from the railway company, you returned them to the railway company?

A. As soon as we were ready to take delivery of the cotton. The custom that existed as to the actual delivery of the cotton to the ship was the same all over the port, namely, the receiving officer of the ship counts the cotton and signs a receipt for it; the same with the Illinois Central depot; it's the same with the Southern Pacific, and it's the same with all the roads.

Q. Can you give me the size of a bale of compressed cotton, such as came from Texas in the season of 1894–'95, the average size?

A. Say about 26 cubic feet.

Q. And can you give me its length, height and depth?

A. I should say it would average about 5–2 by 2–9 by 2; somewhere about that; that's only my guess of it.

Q. Prior to the erection of the dock at Westwego, which was burnt in 1894, where was cotton delivered to your line for transportation by the Texas and Pacific Railway Company?

A. At the city wharves.

Q. Mr. Warriner, you are familiar with Westwego?

A. Thoroughly so.

Q. Will you describe Westwego as it existed prior to the erection of this dock?

A. I never was over there before the erection of the dock.

Q. Do you know whether there were any docks erected there prior to the erection of this dock which was burned?

A. I don't know of anything there at all. I never knew of any ships landing there prior to that time. There were no facilities there for loading ships with cotton prior to that time to my knowledge. Cotton was never shipped from there prior to the erection of these docks to my knowledge.

61 I am familiar with the customs and usages existing at New Orleans relative to the shipment of cotton from that place to a foreign port, and was familiar with such customs and usages in 1893 and 1894.

Q. When, first, to your knowledge, Mr. Warriner, was any freight delivered to steamships at Westwego?

A. I think in the fall of 1894.

Q. Prior to that time, was cotton or other freight ever delivered to your line at Westwego?

A. No.

Q. What kind of freight is handled at Westwego?

A. Cotton, grain and staves. Through cotton.

Q. All through cotton?

A. All through cotton.

Q. In 1894, was Westwego within the port of entry of New Orleans?

A. It was discovered afterwards that it was not legally within the port of New Orleans, but we never had any trouble about going there until 1895, I think it was.

Q. Prior to the erection of this dock at Westwego, was cotton consigned to foreign ports shipped from Westwego at all?

A. Not to my knowledge.

Q. According to the custom and usage at the port of New Orleans as it existed prior to the season of 1893–1894, would cotton consigned to a foreign port be delivered to a ship at Westwego?

Mr. TAGGART: That is under the same exception.

The COURT: Is that prior to 1893?

Mr. TAGGART: Yes.

The COURT: Objection sustained. The fire was in the fall of 1894. It was prior to the time the dock was opened.

Exception by plaintiffs.

Q. How long subsequent to that time did cotton consigned to foreign ports begin to be delivered there?

A. Between the season ending in 1893 and the season commencing in the fall of 1894.

Q. Prior to the erection of this dock did you consider Westwego as being commercially within the port of New Orleans?

Objected to. Objection sustained. Exception by plaintiffs.

62 Q. Under what circumstances, Mr. Warriner, did you know of any vessel going to Westwego to receive cotton in 1894?

A. I don't know as I quite understand that. I never sent a vessel to Westwego to load cargo without having previously made some arrangement with the railroad company.

Q. In November, 1894, did you have any arrangement with the Texas and Pacific Railway Company relative to the receipt of cotton by you from it?

A. We had a number of contracts to carry cotton from New Orleans to foreign ports where we had agreed to take it at West-

wego if a sufficient quantity was there. The arrangement as to a sufficient quantity was that we wouldn't send a ship for less than two thousand bales or so, so as to keep us working at least a whole day.

Q. Was any time specified or understood between you and the Texas and Pacific Railway Company at which you should go to Westwego to receive cotton after it arrived there?

A. No; the delivery on both sides was unrestricted.

Q. Did the Texas and Pacific Railway Company ever give you any notice that you were bound to take or receive cotton at or within a specified time?

A. No; there was never any complaint made to me by the Texas and Pacific Railway Company that I did not receive cotton on time that I know of.

Q. Then do you mean to say, Mr. Warriner, that in the season of 1893–1894 you would not send your vessel to Westwego for less than two thousand bales?

A. That was our practice then. And prior to the erection of this wharf we did not send our vessels there at all.

Q. Did you ever have any arrangement or contract with the railroad company to go to Westwego for less than two thousand bales?

A. I don't remember of any. We have taken less than two thousand bales at Westwego, certainly. It might suit us sometimes to take less. If we were at Southport we might drop over to Westwego and take whatever they had, and we did that, I think,
63 in several instances. When we did go to Westwego for less than two thousand it was to suit our own convenience.

Prior to the erection of this dock, when the Texas and Pacific Railway Company offered cotton to us for transportation by our ships we received such cotton at the city wharves.

Q. In 1893–1894, if the Texas and Pacific Railway Company had offered you for transportation on your ships less than two thousand bales of cotton, where, by the custom of the port of New Orleans, would such cotton have been received by you?

Objected to. Objection sustained. Exception.

Q. Mr. Warriner, how was cotton received by you for transportation on your ships at docks other than your own docks?

A. In the same way that it was received on our own dock, exactly. The cotton was tendered, and the mate or receiving officer counts it and signs a receipt for it.

Q. Will you please state whether or not such cotton was required to be placed at any particular point before it would be receipted for by the officer of the ship whose duty it was to receive it?

A. The cotton was placed within reach of the ship's tackle, always. This custom was universal to my own knowledge. By "within reach of the ship's tackle," I mean within a reasonable distance of the ship's tackle—abreast the ship.

Q. If cotton tendered to a ship of your line at a dock other than the dock of your line had not been placed within reach of the ship's

tackle, would such tender have been good according to the custom of the port of New Orleans?

A. Not in my opinion. They would have to truck it to within the customary distance. Whoever was making the delivery would have to truck it.

Q. Then do you mean to say if cotton to be transported on one of your vessels had been brought by the railroad company to a point not within reach of the ship's tackle, that the officer of the ship
64 would, if he followed the custom of the port of New Orleans in that respect, have refused to receipt for the same until it was brought within reach of the ship's tackle?

A. Yes, sir; we certainly wouldn't go out in the woods for it. I never paid for the truckage or carriage of cotton from a point without the reach of the ship's tackle to a point within reach of the ship's tackle to my knowledge.

Q. Mr. Warriner, how were vessels to load or discharge cargo at Westwego as distinguished from New Orleans prior to March 20, 1896?

A. Well, up to the fall of 1895, we simply used to send ships there and load without any difficulty at all, but the powers seem to have discovered, somewhere in the fall of 1895, that Westwego was not within the port of entry and they compelled us to get special permission from Washington by telegram. I mean for each particular ship. We would ask the Washington authorities through the custom-house officials in New Orleans two or three days before we intended to go to Westwego, for permission to load at Westwego.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

Q. Mr. Warriner, are you quite positive that during the season of 1893 this cotton wharf at Westwego was not in use?

A. The season of 1893 runs into 1894, and in that case Westwego, in the season of 1893 and 1894, was. It was in use to the best of my recollection in the fall of 1894.

Q. Was it not in use, really, now, during the season of 1893–1894, and this season of 1894–1895, which was just beginning when the fire broke out, was the second season in which it had been in use?

A. No, I think not. My recollection is it was in use in the fall of 1894 for the first time.

Q. Then it is your recollection that in the fall of 1894 it
65 had only been in use two months when the fire actually broke out?

A. My recollection is that it was in the fall of 1894, but I might be mistaken—but I think we then had cotton delivered at the city wharf from the Texas and Pacific.

Q. In the fall of 1894?

A. Yes, sir.

Q. Was not that after the fire?

A. No; before the fire, in 1894.

Q. Have you any means of verifying that recollection?

A. I don't know that I could find it. I haven't tried to verify it, this time.

Q. Is it not a fact that during the season of 1893–1894, there was a considerable amount of export cotton shipped over your line—delivered to the Elder-Dempster line at Westwego?

A. That is in the fall of 1893 and the early part of 1894?

Q. Yes, sir.

A. I don't remember if it was. I could find that out.

Q. And your present recollection, if I understand you, is that this fire occurred in the early part of the first season when that cotton wharf was in operation?

A. In November, 1894.

Q. In November, 1894, and the cotton season begins about September, does it not?

A. Yes, sir.

Q. Then you state that two months after the cotton season began for the first time at Westwego this fire occurred?

A. I may be wrong about that, but that is my recollection. That is my present recollection.

Q. But you *not are* really positive about it when you come to reflect?

A. No, I am not.

I spoke of having a number of engagements with the Texas and Pacific. By that I do not mean arrangements to unite with the Texas and Pacific in making the through rate on cotton to points in Europe. I mean that we had a number of engagements to carry from New Orleans to points in Europe. Agreeing to take a certain amount from New Orleans to Liverpool. I knew that the Texas and Pacific would make an arrangement with the shipper, adding
66 to our rate the rate of the Texas and Pacific in making the through rate. That was true.

Q. Well, that does make it a Texas and Pacific engagement at a through rate in that sense?

A. I don't know whether it does or not; all our engagements were simply to carry the cotton from New Orleans. And we agreed to take our proportion of the entire rate, that is, to receive our rate from New Orleans to the other side, but we didn't know where the cotton was coming from. We might suspect that on that sort of an arrangement the Texas and Pacific Railway Company would name our line in the bill of lading which it would sign as the one to carry from New Orleans to Liverpool, or whatever European port it was. I knew that it had been done.

Q. And had received copies of the through billing under an arrangement of that sort constantly, did you not?

A. We received copies of the through bills of lading issued by the Texas and Pacific.

Q. And you received copies of those bills of lading in which the agent of the railroad company signed, not only for the railroad company, but for the steamship company on that through bill of lading, did you not?

A. That's not my understanding of it at all.

Q. I ask you, if you did not receive copies of such bills of lading?

A. We received copies of the bills of lading that they issued.

Q. And which purported to be signed for both the railroad and steamship companies?

A. Which they signed, and under which they agreed to carry the cotton to Europe.

Q. Which was signed by them in language something like this: That the railroad agent was signing for the railroad and steamship, and that he had signed three of like tenor and form, one of which being accomplished the others to stand void?

A. I never read any bill of lading of that sort.

Q. Were any bills of lading for shipments, say, under con-
67 tract number forty-four, which you remember, do you not?

A. Yes, sir. Copies of those would sometimes come into our possession; they did generally. And they generally named the Elder-Dempster line as the line from New Orleans to the other side.

Q. And whatever was in those bills of lading you would have some knowledge of, wouldn't you, generally?

A. No; we would have knowledge that a certain lot of cotton represented by the bill of lading was going to be carried under contract number forty-four.

Q. Now, these masters' receipts, in many cases, would correspond with that through bill of lading, would they not?

A. Supposed to have everything on them put on the master's receipt.

Q. Did you have a through bill of lading also?

A. For the purposes of identification.

Q. And the through bill of lading which you would issue would be a recapitulation of what was on the railroad bill of lading?

A. The master's receipt would.

Q. And in many cases did not the master's receipt refer to this original bill of lading which was issued by the railroad company and which was the original?

A. Cotton was signed for on such a date by such a person at such a place under bill of lading number so and so. That is to say, shipped at Paris, Texas, on through bill of lading number thirty-nine, T. & P. contract number forty-four, and that original would go to the consignee in Europe, and we received the master's receipt with copy of bill of lading attached, and supposed it had everything correctly copied that was on the bill of lading they issued. That master's receipt would refer to the original bill of lading issued at Paris, Texas.

Q. And would be the instrument by means of which the consignee would receive that cotton from your steamer line at Liverpool?

A. The master's receipt is the instrument. I don't know what would become of the original bill of lading issued at Paris. I suppose it would go to the consignee.

68 Q. Go to the consignee also, would it not, and those two together would be the authority for him to receive the cotton?

A. For delivery on the other side.

Q. And then you would get that bill of lading—would not that bill of lading accompany the draft?

A. I suppose so in the usual course of business; that was the custom, I suppose.

Q. And that draft would be paid and the party would acquire an interest in that shipment through the payment of the draft which has the original bill of lading attached?

A. I suppose so; that's the way they do it.

When this freight was turned over at Westwego, the steamship line paid the Texas and Pacific its proportion of this through rate, which was named in the through bill of lading. And the balance of the freight was collected on the other side by the steamship company as to its proportion.

Q. That is, the total freight is collected on the other side, and you had already paid the Texas and Pacific its proportion?

A. It was a contract for ocean carriage—a contract that was made with the shipper at the time in the through bill of lading.

Q. Now, then, you speak of delivery within reach of the ship's tackle; do you know how actually the cotton was deposited on the wharf at Westwego and received by the stevedore who went there, as matter of fact?

A. Opposite the ship. I mean opposite the ship on the wharf. And where it could be reached by the longshoremen. How far the cotton was actually placed from the ship I don't pretend to state—within a reasonable distance of the ship's tackle.

Q. What sort of tackle was used in the loading of cotton at Westwego?

A. It was loaded with falls and slings.

Q. Is there any trucking or rolling?

A. There is rolling by the longshoremen in order to sling it to get it on the ship.

69 Q. But when it is not immediately alongside the ship, they either roll or truck it?

A. Sometimes they don't need to do it—just pull it down and sling it to the falls, that is, the nearest cotton.

Q. But that that is farther off they either have to roll or truck?

A. They roll it generally until it is within that distance of the ship. But just how far back it may be put I can't say. But he has nothing to do with it until it is placed within a reasonable distance, not until it comes within the proper limits.

Q. And in what way it is carried to that place you don't know; you only know that as a matter of inference?

A. I know we never paid any of this extra trucking; we paid a certain amount for loading the cotton. What work was done in order to load that cotton at Westwego I am not able, as a matter of fact, to state.

Before this fire, I believe there was actually a large amount of oil cake loaded there at Westwego. I believe there was. I don't know that that was in front of the cotton. I don't know how the cotton was placed.

Q. You spoke about delivery at city wharves before the building

of this wharf. After the building of the Westwego wharf, it was customary, not only for your steamship line, but for all other steamship companies, to call at Westwego and get cotton?

A. I suppose most of the lines did that.

Q. And all export cotton which was required to be carried by rail came to the port of New Orleans, and all that by the Elder-Dempster line was delivered at Westwego, wasn't it, or substantially all, after this wharf was built, the cotton carried by the Texas and Pacific Railway Company?

A. I don't know; I think there was a good deal carried that was delivered to the city front here, in New Orleans.

Q. I am speaking about export cotton for the Elder-Dempster line.

A. I should say, most of it was delivered at Westwego. This Martin, Wise & Fitzhugh cotton was under special contract, delivered here in the city at the sky lot, as we call them.

70 Q. But where there was a general contract for delivery at the port of New Orleans for cotton to be carried by the Elder-Dempster line, Westwego was the point of delivery, was it not?

A. Yes, sir.

Q. What freight was received there?

A. Well, they loaded staves, hard wood and general cargo of all kinds. That was export freight also.

Q. Carried under an arrangement similar to that of the cotton, was it not?

A. Not generally. Was not specially provided for in advance, not generally carried on a through basis such as cotton. Local shippers would make the freight arrangements, and it would be delivered to us at Westwego.

Q. Now, you speak of having to arrange with the customs authorities to telegraph to Washington?

A. Yes, sir. That was after the fire. There was no such trouble prior to the fire.

Q. All that was necessary was a notification to the customs authorities that you were going to load a ship at Westwego?

A. Did not even notify them. Sent our ship over there as you would do to a city wharf, and on an engagement the same as our ship had been loaded by in New Orleans.

Q. Looking at the letter of November 12, 1894, from your company to the Texas and Pacific Railway Company, do you recollect, Mr. Warriner, whether, in addition to the transfers mentioned in that letter you had then any other transfers on hand which had been sent to you by the Texas and Pacific Railway Co.?

A. No, sir; I think we had cleared every one out of the office and sent them back to the T. and P. railroad. We had a good many ships at about that time—two or three of them certainly—and were anxious to get ready for them.

Q. Do you recollect, Mr. Warriner, that on November 12, 1894, the steamship Leyden went up to Westwego?

A. It was about that time—the time of the fire. She had not begun loading. I don't know exactly now what was the reason.

She was very late; she should have been in four or five days before that. She made a very long passage.

71 C. G. MILLER, recalled as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

By Mr. CLEVELAND:

Q. You don't mean to say you sent that original sheet to Elder-Dempster & Company, did you?

A. Yes, sir; the original sheet.

Q. How did you get it back from them?

A. After the fire; in fact, the night of the fire, we sent down to the steamship offices to get what transfer sheets they held to be returned to us, and we obtained some that night from some of the offices, but I believe the office of Elder-Dempster & Company was closed when our man got down there, and we either sent down a man the next day or we communicated with Elder-Dempster & Company and they sent them up to us.

ALFRED LE BLANC, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am forty-five years of age, reside in New Orleans, and am agent of the Harrison line of steamers. I have been the agent for that line nineteen years. I was in that line of business in 1893 and 1894. I have not represented any other lines in New Orleans than the Harrison line. We have two special wharves here in New Orleans. One is at Jackson square, and the other at Picayune tier. We had those wharves in 1894. We have no other wharves except those here in New Orleans. The Harrison line is engaged in carrying between here and Liverpool. That is, both to and from New Orleans. It carries anything that comes along. The steamers of our line carry cotton. And they have always done so. When that cotton leaves New Orleans on our line it is consigned to Liv-

72 erpool. Our line has carried cotton from this port continually since I have been the agent here. In 1893 and 1894 the cotton that our line carried was delivered to our ships everywhere. Cotton was delivered to our ships at other places than at our wharves.

Q. Did you have occasion during those years to receive cotton from the Westwego wharves?

A. I think so; I don't remember exactly, but I am sure we did. I have no recollection as to how much cotton we received at Westwego during those years.

Q. Could you say whether or not you did receive much or little cotton from Westwego?

A. I have nothing to guide me—was that the year that the fire happened?

Q. 1894 was the year of the fire.

A. Oh, yes; we carried considerable. That was in 1894. That cotton was delivered at Westwego by the Texas and Pacific railroad. I think all the cotton delivered to us that year via the Texas and Pacific railway was delivered at Westwego. Before the construction of the wharves at Westwego we carried cotton from the Texas and Pacific Railway Company. Delivery was made at that time, sometimes at their own wharf, on this side, and sometimes at ours. It was all delivered from the New Orleans side of the river. I have been to Westwego. I was never at Westwego before the Texas and Pacific Railway Company built there. I do not know of any vessel that ever discharged a cargo, or any part of it, at Westwego prior to the erection of the wharves there. I don't remember any. I am familiar with the customs and usages existing at this port—that is, New Orleans—in relation to the shipping of cotton from this port to foreign ports.

Q. And you were familiar, I suppose, with such regulations in the year 1893 and 1894?

A. I don't believe they have varied since then.

Q. Were there any custom-house restrictions at that time and prior to March 20, 1896, that you know of about steamers going to Westwego and loading there or discharging there?

73 A. My recollection is that we used to have to have a custom-house officer there; I don't know that there were any other restrictions. We had to enter before we went there. I don't think we had to get permission to go there from the custom-house authorities; announced our intention of going there and they sent an officer. The Government paid for that officer. The shipper or ship did not have to pay for the officer.

Q. In whose charge were the wharves at Westwego—who had charge of them?

A. The Texas and Pacific railroad. Their permission had to be obtained before vessels went there. I never sent a vessel to Westwego to load a cargo without having previously made or obtained some arrangement with the railroad company.

Q. Would you go to Westwego to receive any minimum amount of cotton from the Texas and Pacific Railway Company?

A. Well, I wouldn't go there for less than 1,000 or 1,500 bales, but there was nothing definite, just a sort of an understanding. That understanding was with the railroad.

Q. With what official of the road?

A. I don't know what he was called. There was no written contract.

Q. Will you state whether or not in 1894, or the year that the Westwego wharves were burned, you had a contract with the Texas and Pacific Railway Company to transport any certain amount of cotton?

A. I am sure we had; different contracts. We made engagements from day to day. We did not have a general contract with them. These contracts that I speak of were in writing. No time was specified in those contracts, at which we should go to Westwego for the cotton.

Q. Did you ever have any complaint from the railroad company that year, that you remember, stating that the cotton had not been moved by your line within a specified time?

A. I don't remember any—there was no specified time. The minimum amount of cotton that our vessels would go to
74 Westwego for at that time was a thousand to fifteen hundred bales.

Q. Then, as I understand you, none of your steamers would go there to take any amount of cotton less than 1,000 bales?

A. No; we wouldn't agree to do it in advance.

Q. According to the custom in New Orleans at that time, if you had an arrangement to take, say less than 500 bales of cotton coming from the Texas and Pacific Railway Company, where would that delivery have been made?

A. Probably at our wharf.

Q. That is, on the New Orleans side of the river?

A. Yes, sir.

Q. How was the cotton delivered by the Texas and Pacific Railway Company to your line in New Orleans, on your wharves?

A. Delivered in drays. Brought to our docks and landing on drays by the drayman at the railroad's expense. I never paid for any such transportation.

Q. How was the cotton, at that time, received for transportation by your line of vessels, Mr. Le Blanc?

A. The drays put it on the wharf and we received it; your question is rather vague—the dray brought it down to the wharf, the drayman unloaded it, and we were on the wharf and signed a receipt for it. When we received cotton at wharves other than our own, and at docks other than our own, it was put on the wharf, and when the ship went there an officer counted it and receipted for it. That cotton was required to be placed within her reach before it could be receipted for by the ship's officers. By "within her reach," I mean so we can get to it; within reach of the ship's tackle, is the common expression. "Within reach of a ship's tackle" literally means where the ship's ropes can get on to it, so that the ship's winches can pull it.

Q. If the cotton was tendered a ship of your line, not at your dock or not at your wharves, and the cotton was not within
75 reach of the ship's tackle, would that cotton be received by the ship's officers?

A. I don't think so, unless there was some arrangement made by the railroad for trucking. We might, in exceptional cases, accept it there, but I don't know of any. Such truckage, without special arrangement, would be paid for by those who delivered it.

Q. In 1894, please state whether or not you had any arrangement with the Texas and Pacific Railway Company relative to receiving cotton from that road.

A. I don't quite understand your question; we used to make engagements for cotton, and when it came in we went there for it, but we had no special arrangement—just like anybody else. We went to

Westwego for it, and everybody did; there was no special arrangement.

Defendant's counsel reads from the deposition, as follows:

Cross-examination by Mr. TAGGART:

I had been the agent for the Harrison line in New Orleans for a number of years before 1894. When I said that our ships received cotton everywhere, before 1894 and 1893, I meant that they went to various points to receive cotton. I should think the bulk of the cotton carried by the Harrison line was received at other points than their own wharf. That custom was universal with steamships landing here in New Orleans. That is, at the terminals of railways the steamship lines were all accustomed to receive cotton which was shipped over the various rail lines which was to go from the rail lines to the steamship lines. It was also, for a long time before that, a custom for the steamship lines and the rail lines to unite in making what we call a through rate, which was a combining of the local rates of the two. That is, the railway company at the point of shipment would make a through rate to the shipper in Liverpool we will say. And that would
76 be based upon a contract with the steamship company, by which the steamship company would accept a certain portion of that rate from the railway, as its share of the carriage. Those are the kind of contracts or arrangements that I speak of that were in force in 1894 between our line and the Texas and Pacific Railway Company. And it was in accordance with this custom, or an arrangement of that sort that the reception of the cotton by the steamship lines was the terminus of the railway. And that was so in the case of the Texas and Pacific, and had been so for several years before 1894.

Q. When you speak of a minimum amount of 1,000 bales of cotton, do you mean that would be the minimum amount you would enter into under one of these contracts?

—. No, sir; we wouldn't go to Westwego unless there was at least that amount there.

Q. But you would go there; where you had made one of these contracts, and there was a balance of a shipment which was included in that contract which had not yet been taken?

A. We would have to do it.

Q. That would be a part of the contract, wouldn't it?

A. Yes, sir.

Q. It was the understanding, was it not, that in these written contracts for through rates Westwego was the place of reception by the steamship company of the cotton?

A. Yes, sir.

Q. And that had been so for some years prior to 1894, hadn't it?

A. I think so.

Q. This wharf at Westwego is not the only wharf of the kind where similar shipments are made, is it?

A. No. There were not many others. There were only two

others. And there were in 1894, they were at Southport and Gretna. Gretna is opposite New Orleans, on the west bank of the river, the same side as Westwego. A little further down, near the city. And Southport is higher up, and on the east side. On the same
77 side as the city of New Orleans. The same method of handling and receiving cotton was observed there.

Q. Now, you say the railway company had no authority to sign a bill of lading for the Harrison line. This cotton which you agreed to receive at through rates for Liverpool, you had an arrangement with the railroad company that it should be shipped at not exceeding a certain amount per 100 pounds; was that the arrangement?

A. Yes. I think those contracts all had for their basis 100 pounds. At a certain rate per 100 pounds.

Q. And your understanding was that you had entered into an arrangement with the railroad company to receive from the railroad company that much cotton at that rate?

A. Yes, sir.

Q. At Westwego, in the case of the Texas and Pacific?

A. Yes, sir.

Q. And whatever arrangement the railroad company made with the shipper, you understood was made on behalf of the railroad company for its proportion of the rate, and on behalf of the steamship line for its proportion?

A. Yes, sir.

Q. Now you say that in 1894, when you wanted to ship from Westwego, you gave notice to the custom-house officials and they would have an officer go to Westwego?

A. That's my recollection. It used to be the custom, but whether it was in 1894, I really don't remember. I don't know whether it still obtained in 1894; there is nothing to fix the date. I never had any trouble in getting an officer to go, or anything. The only thing required was a mere notice, just a form.

Q. Your recollection, as I understood you to testify, was that there were no shipments of the character I have described—through shipments—of cotton, in 1894, where the cotton was delivered to your dock?

A. No, I don't remember any.

Q. Whatever shipments of cotton, then, you made from your two wharves in New Orleans, were what we may call exceptional shipments, not in the general mass of shipments that you were
78 engaged in carrying?

A. No, they were smaller amounts from smaller roads, and for "spot" shippers. And for individual shippers.

Plaintiffs' counsel reads from the deposition as follows:

Cross-examination:

Q. And to that extent, then, the railroad company did have the right to make an arrangement with the shipper of this cotton, did he not?

A. Yes, the agent is supposed to take it that way, but our liability only began when we got the cotton.

Q. Whatever cotton was at Westwego, which you had arranged for under one of these, what I would call through shipments, you would call for, as a part of your arrangement with the railroad, wouldn't you, under the written contract?

A. Each contract stood by itself.

Q. Exactly; and suppose you had made a contract for 10,000 bales at a rate of $1.49 and you had carried 9,500 of those bales in previous shipments, you wouldn't wait, in order to make a new contract, in case the remaining 500 bales were there, ready for shipment, and you were advised of it, would you, before sending for it?

A. I think we might; I don't know.

Q. You think you would?

A. I think so.

Q. Suppose that was the last of the season, would you let it remain there, or would you expect the railroad to bring it to your wharf?

A. I think the railroad would have to bring it to our wharf.

Redirect examination by Mr. CLEVELAND:

Q. You stated that it was an understanding, Mr. Le Blanc, that your vessels would not go over to Westwego for less than a specified number of bales. About how many, did you say?

A. One thousand or fifteen hundred.

Q. Do you know of any of your ships going over there for less than a thousand bales?

79 A. I don't know of any special case; they may have done so, where it may have suited us. Where it may have suited us to let them go, we would do so. Under the arrangement I had with the Texas and Pacific, I do not consider that I had to go there for less than that number of bales. Under that arrangement I could have declined to send my vessels there for less than that number of bales. If I went there for a smaller number of bales, it would be only when it suited my convenience to do so.

Q. When cotton was delivered beyond the reach of the ship's tackle, Mr. Le Blanc, do you know who would pay for the additional truckage to a point within reach of the ship's tackle?

A. Well, I don't think it was ever delivered beyond the reach of the ship's tackle. We employed men, at so much a day, to load the cotton, and to load it from within reach of the ship's tackle. It has to be brought out either by the dray, or trucks, or the railroad trucks, and when it is brought there the ship receives it. She doesn't receive it away off at the end of the wharf; doesn't sign for it until it gets down to her, brought there either by the railroad company or the longshoremen; that's an arrangement between the stevedore and the railroad men, the getting of it down to the proper place, but the ship doesn't receive it until it is alongside of the tackle.

Defendant's counsel reads from the deposition as follows:

Recross-examination:

Q. Let me see that I understand the last answer. The longshoremen is paid by the steamboat company?

A. Well, he is paid by the middle man; we have a contract with a man called the stevedore, who employs the longshoremen. I don't know, as a matter of actual fact, how far this longshoreman would truck the cotton, it's not my business; that's a matter between the stevedore and the railroad. The stevedore is very likely to
80 make the railroad truck it. But what actually did occur at Westwego, in that respect, I don't know. I don't suppose I was at Westwego in 1894 more than two or three times before the fire. I think I was there about a week before the fire.

Q. And you didn't observe, particularly, this matter of loading the ship, or the trucking of the cotton, or anything of that sort; that didn't concern you, because it didn't relieve you of any of the expense that you were under?

A. No, it did not concern me.

Cross-examination:

Q. Suppose the remaining portion had been delivered at Westwego, did you ever know of a case where you compelled them to bring that to your wharf?

A. No, sir; I don't know of any case.

Q. And you don't know what you would do under that arrangement, then?

A. No.

Redirect examination:

Q. You say that the custom of receiving cotton at Westwego, in answer to Mr. Taggart's question, had been in vogue for several years prior to the fire?

A. Yes, I think so.

Q. How many years—do you know, sir?

A. No, I don't remember; ever since the place was built, I suppose.

Q. That custom didn't prevail before those wharves were built, though?

A. No, hardly, sir.

Q. When you say it was the custom to go to Westwego for cotton, you mean, after the arrangement with the Texas and Pacific Railway Company, do you?

A. We didn't go there unless we had an engagement for some cotton; there would be nothing to go for. That is, an engagement with the Texas and Pacific Railway Company. They to give us so many thousand bales of cotton; if we didn't book anything we wouldn't go.

Q. You wouldn't receive, or would you receive cotton at
81 Westwego, without a special agreement with the railway company, or could you receive it that way?

A. Yes; if they hadn't made an engagement there would be no cotton to receive; they would make an engagement to give us so many bales, and when it came in we would call for it, but if there wasn't any engagement there would be nothing for us to go over there for.

W. J. HAMMOND, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am fifty-one years of age and my residence is in New Orleans, and I am a steamship agent. I have been engaged in that occupation since 1875, in New Orleans. Prior to 1894 I represented a great many lines—no particular line, and the same in 1894. I have one wharf at the foot of St. Mary street, in the city of New Orleans, but I load many of my steamers at the different terminals as well. Those lines were engaged in carrying cargoes from here to Europe; cotton, grain and general cargoes. Prior to 1893 cotton was delivered to our ships for transportation by whoever we engaged it from; we engaged from the Texas and Pacific Railway Company all the time. Some was delivered at our wharf on the New Orleans side and some at Westwego; ever since the wharf has been built we sent our steamers over there on certain conditions. Prior to the time the wharf was built when there was no place to send them, of course we didn't send them there. Then it was delivered on the New Orleans side of the river at my wharf, or other landing places of my steamers. I am familiar with Westwego. Prior to the time the dock was erected which was destroyed by fire in 1894, there were no docks at Westwego that I know of. I never landed any ships there prior to building the dock. I don't think there were any facilities there for loading or discharging ships. I never went there before that.

82 Q. Prior to the time the dock was built, was there any commercial business done at Westwego, to your knowledge?

A. Not to my knowledge.

Q. Did you ever know of a vessel to discharge her cargo or any part of it at Westwego prior to the erection of this dock?

A. I don't remember any, sir. I was familiar with the customs and usages existing at New Orleans in 1893 and 1894. I don't think there has been any change. Prior to the erection of this dock there was no freight delivered to our lines for transportation at Westwego that I can remember.

Q. When first was it so delivered?

A. Indeed, I forget the date that Westwego was built. I can't remember that.

Q. What kind of trade is handled at Westwego?

A. We go over there for cotton and oil-cake and other cargo.

Q. Through cotton?

A. Through cotton only. Prior to the erection of these docks I don't think that cotton consigned to foreign ports was shipped from Westwego.

Q. When, prior to the erection of this dock, was cotton consigned to New Orleans delivered there by any road—by the Texas and Pacific Railroad Company?

A. The Texas and Pacific used to deliver to us on the New Orleans side.

Q. Was the cotton consigned to New Orleans ever delivered at Westwego?

A. I couldn't say that—it looks quite unlikely though.

Q. Mr. Hammond, according to the custom and usage of the port of New Orleans, as it existed in the season of 1893 and prior to the season of 1893 and 1894, where would cotton consigned to foreign ports have been delivered to the ships—cotton engaged from the Texas and Pacific?

A. Well, if it amounted to a certain quantity we would go over there to take it.

Q. I am speaking of prior to the erection of the wharves at Westwego?

83 A. They delivered at the New Orleans side at our wharves or wherever our steamers laid on the New Orleans side.

Q. After the erection of this dock, how were vessels allowed to load their cargoes at Westwego as distinguished from New Orleans?

A. Made arrangements to go there for a certain quantity and we went. I made such arrangements with the Texas and Pacific Railway Company.

Q. Could vessels, within your knowledge, go to Westwego to load cargo without special permission from the custom authorities?

A. No, we always got permission because it wasn't within the New Orleans custom district at that time. After that it was made part of the port of New Orleans, but I forgot the year exactly.

Q. What was the nature of this special permission?

A. Simply to notify the custom authorities that we desired to go there. I never knew a vessel to go to Westwego to load her cargo without first having notified the customs authorities.

Q. Under what circumstances do you know of any vessels going to Westwego to receive cotton in 1893?

A. Well, no differently from today.

Q. Did you ever send a vessel to Westwego to load her cargo without having previously made some arrangement with the railway company, and without sending a notification to the custom-house?

A. We always had to get permission and have an engagement with the Texas and Pacific before going there, because it was their own wharf and we had no right to go there unless we had it.

Q. In November, 1894, at the time of this fire, did you have any arrangement with the Texas and Pacific Railway Company relative to the receipt of the cotton by you from it?

A. I couldn't tell without looking at my engagements. I always made engagements, say, from one hundred bales to five thousand.

Q. Was there any arrangement between you and the Texas and Pacific Railway Company as to the number of bales which
84 you would go to Westwego to receive?

A. It was always understood we should not go there for less than one thousand bales; on account of extra cost of towage involved and the loss of time, it wouldn't pay us to go there for a smaller quantity.

Q. Was there any time specified in which you should go to Westwego to receive cotton from your line?

A. It depended upon the engagement made with the railroad. I mean that in the season of 1893–1894 I would not send my vessels to Westwego for less than 1,000 bales unless it suited me, unless it suited my own convenience. But prior to the erection of these docks I did not send my vessels there at all. I never had any arrangement or contract with the railway company to go to Westwego for less than 1,000 bales. I have sent a vessel to Westwego for less than 1,000 bales. I couldn't tell you how much less—merely a matter of convenience to us. Simply a matter of my own convenience.

Q. Did you ever know of a vessel going to Westwego to load cargo without having made some special arrangement with the railway company?

A. That I couldn't say; I can only speak for myself as to that.

Q. And as to your own line?

A. That's all. It was always tacitly understood that I would not go for less than a thousand bales, and they never demanded that I should go there.

Q. Prior to the erection of this dock or docks, had the Texas and Pacific Railway Company offered cotton to you for transportation on your ships, where would that cotton have been received?

Objected to as immaterial. Objection sustained. Exception by plaintiffs.

—. In 1893 and 1894 we were receiving cotton at our dock in New Orleans all the time. We received from the Texas and Pacific Railway Company, I presume, because we engage every year with them.

In 1893 and 1894, if the Texas and Pacific Railway Co. had
85 offered me for transportation on my vessels less than a thousand bales of cotton, by the custom of the port of New Orleans such cotton would have been received by me at the city front wharves. Cotton was delivered to my wharf in New Orleans by the Texas and Pacific Railway Company in the usual way by drays. The Texas and Pacific Railway Co.'s draymen drayed it.

Q. Did you ever pay for such drayage?

A. All cotton must be delivered at the ship's side at the expense of the shipper.

Q. How was cotton received by you for transportation on your steamers?

A. Received alongside of the ship by the mate. By alongside of the ship I mean at the ship's wharf—within reach of the ship's tackle—to use a common expression. If cotton tendered to me for shipment over my line, at a dock other than the dock of my line,

had not been delivered within reach of the ship's tackle, such tender would not have been good according to the custom of the port of New Orleans. It must be delivered within reach of the ship's tackle.

Q. Then, do you mean to say, if cotton to be transported on one of your steamers was brought by the railroad company and delivered not within reach of the ship's tackle, that the officer of the ship would, if he followed the custom of the port of New Orleans in that respect, refuse to receipt for it until it was brought within reach of the ship's tackle?

A. He could do so. I never paid for truckage for the carriage of cotton from a point not within reach of a ship's tackle to a point within reach of a ship's tackle. I pay the stevedore so much a bale.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

I am the agent for the Ross line, the Thomson line and other lines composing what is called the Hammond lines, com-
86 posed of a lot of lines, a number of steamships which I was endeavoring to obtain freight for and making engagements for from time to time. I was the agent of these lines in New Orleans. You cannot call them regular in the same sense as the Harrison and West India lines. They are composed, some of them, of regular lines because they send the ships the same as other lines, but, of course, not as regularly as Harrison and West India lines. Some of them are tramps and some of them are not. They come and go as freight is plentiful or not plentiful. What I call the Hammond lines is composed of a number of ships of that sort which I can reach and get for the purpose of transporting freight. I have one wharf here in the city of New Orleans which I use to load general freight at for these ships. I say that prior to the erection of this wharf at Westwego any cotton delivered by the Texas and Pacific Railway Company was delivered on the New Orleans side. It is what we call the "city front," and is where ships are loaded from the elevator or from Eighth street down to the water works and below Canal street.

Q. And that is composed of some 30 or 40 wharves?

A. Not quite so many; ten anyway. It is a continuous levee for about a mile and a half. It had been granted us by the corporation and we had not room there and so we had to go in other places where we could put a ship in. The Texas and Pacific Railway Company did not have a wharf for export here on the New Orleans side prior to the erection of that one at Westwego. They used to deliver at our wharf, where our ship was. That might be at any one of these docks in the city.

Q. Now, then, that custom was about the delivery of cotton from the Texas and Pacific Railway Company here along the city front on this side, the New Orleans side, prior to the erection of this wharf, after the erection of the wharf at Westwego, that was the recognized place of delivery for export cotton, was it not?

A. At Westwego—it was their terminal.

87 Q. And the steamship company goes over there in order to get this cotton for export on its steamers?

A. Oh, yes, they go there; that is, for a certain amount of cotton.

Q. And in making arrangements for this export cotton, it is the custom of your line as well as other steamship lines to make an arrangement for what is known as a through rate for cotton, is it not?

A. Yes, sir.

Q. For the shipment of two thousand, four thousand or six thousand bales, as the case may be?

A. For 100 bales—any quantity. We make arrangements with the railroad, naming them our sea rate, and they add on to it whatever it costs them to bring it to the ship's side. Those things are booked every day—fifty bales, one hundred bales, a thousand bales, or ten thousand bales.

Q. And the sea rate is the rate from the point of terminals of the railroad?

A. From the time it comes into the possession of the steamer until it reaches its destination. That destination is Liverpool, Bremen, Havre or other European port.

Q. And it is the custom, to your knowledge, is it not, for the railroad company to make a contract with its agent at the point of shipment for a through rate, is it not, from the interior?

A. Yes, sir.

Q. And the custom is this, is it not, as an example: The representative, we will say, of the Gulf, Colorado and Santa Fé railroad arranges for the delivery by the railroad company at the port of New Orleans, he arranges with respect to the service to that port, and then arranges from the port of New Orleans to Liverpool: that is the custom, is it not, to your knowledge?

A. Yes, sir. They would make an arrangement in the interior, say, at one dollar and a half through rate—we would get fifty cents and the railroad one dollar.

Q. And the railroad agent would make a stipulation with the shipper respecting the obligation of the railroad company for its proportion?

88 A. The ship is only responsible from the time she takes charge for the sea rate.

Q. But you understand that the railroad agent can make an arrangement with respect to the obligation of the railroad company for its proportion, that is, put in the bill of lading, and also for the steamship company for its proportion?

A. With the rate which the railroad agent makes in the interior with the shipper we are not concerned, that is his own private business, we are not supposed to know anything about it. Wherever a through bill of lading comes to us and that bill of lading reads say one dollar and fifty cents, why, that is the through rate, and we take the freight on the bill of lading and forward it on what is known as a through rate, but in some cases these bills of lading are changed here for local bills of lading, that is, in some instances.

Q. In those bills of lading based upon shipments under arrangements such as you describe for a through rate, it was customary, was it not, to describe the point at which the railroad would deliver the cotton as New Orleans; don't you know that?

A. Always.

Q. And that was understood to be Westwego, was it not? In the case of the Texas and Pacific, between the steamship lines?

A. Yes, sir; that is the way we understood it for not less than a thousand bales. After Westwego was built that was the understanding, but I am at a loss to know exactly when it was built. And after this arrangement it was delivered at Westwego.

Q. And when New Orleans was named, Westwego was included in that term as far as the Texas and Pacific was concerned?

A. Yes, sir.

Q. Now you state, Mr. Hammond, that in 1894 you had some deliveries of freight from the Texas and Pacific Railway Company along the city front—have you any recollection of the Texas and Pacific delivering any other cotton in the year 1894 to any of your ships?

89 A. Well, I could tell by going to the office, but I cannot remember. From memory, I could not.

Q. What would you say as to your best recollection on the subject whether or not any export through cotton was received from the Texas and Pacific at any other point than Westwego in the year 1894 by your line?

A. I couldn't remember, because we preferred going to Westwego. We also received through export articles. Oil cake, and when the elevator was built at Westwego, we received grain, hardwood lumber, staves and everything. Cotton-seed meal and cake, and I think we have received provisions too—general cargoes.

Q. Now, you say you always had permission of the railroad company, you mean by that that you did not go to Westwego unless it was for some of these articles which you had arranged for export shipment?

A. That was the only reason we would have for going there.

Q. But you do not mean any permission apart from that?

A. We would of course have to ask the wharfinger if there was room to go in there.

Q. But as to the question of room you never had any special permission from the railroad company?

A. When we were going to send a ship there we always made inquiry, always asked them, and never went in without permission.

Q. But by that you do not mean to say that you required permission from the railroad to go there?

A. I consider that equivalent to asking permission.

Q. I want to know just what you mean when you say you consider that as asking permission.

A. It was a private wharf and we couldn't go there without permission.

Q. The same arrangement obtains for cotton at Southport?

A. Southport, the Stuyvesant docks and Chalmette.

Q. It is limited in capacity?

A. Well, limited capacity of course to a certain extent. And I did not want to send a ship until I knew there was sufficient
90 freight there to warrant me in going. And when I was informed as to a certain quantity of freight being there for shipment by steamer, it was a question for me to determine whether to send the ship or not. The stevedore that I speak of is employed by me to load the ship at so much a bale. And so far as he is under anybody's direction he is under the steamship company's direction. I have been inquired of respecting the getting of cotton within reach of the ship's length. That is generally understood to be on the wharf, alongside the ship, where it can be reached by the men, either by the railroad or trucking it. We have nothing to do with that, we pay a certain price per bale. It does not make, really, as a matter of fact, any difference how far off it may come, we pay so much a bale to have it put aboard the ship. I don't know anything about what they pay to get it from the place at which it was pointed out to them or how far they have to go to get it, but of course they take pretty good care that they don't spend too much money on labor. They limit their labor as much as possible; don't truck it any further than is absolutely necessary; trucking is not necessary unless it is a considerable distance. I don't know, as a matter of fact, whether they ever truck it at all, because I seldom go to those places.

Plaintiffs' counsel reads from the deposition as follows:

Cross-examination:

Q. But you understand that the railroad agent can make an arrangement with respect to the obligation of the railroad company for its proportion that is put in the bill of lading, and also for the steamship company for its proportion?

A. With the rate which the railroad agent makes in the interior with the shipper we are not concerned; that is his own private business; we are not supposed to know anything about it. Wherever a through bill of lading comes to us and that bill of lading
91 reads, say, one dollar and fifty cents, why, that is the through rate, and we take the freight on that bill of lading and forward it on what is known as a through rate; but in some cases these bills of lading are changed here for local bills of lading, that is, in some instances.

Q. That is another matter, and that is what you refer to, is it not, when you say they have no authority to sign bills of lading?

A. We do not care about the rail rate. We simply desire to get our sea rate on the shipment from here and, of course, the agent in the interior may sign a through bill of lading which will include the rate from that interior point to the point of delivery and we do not give authority to any one to sign bills of lading.

Q. But you know it has been the custom for agents in the interior

to make bills of lading covering the rate for this entire shipment, do you not?

A. We know that they sign bills of lading in that way, but we do not know exactly the rate until after the bills of lading are here. When they reach here, of course we see then what the rate is, but we have nothing to do with the signing or giving of rate by the agent there.

Q. And this was the custom to your knowledge, was it not, that those bills of lading the agent signs for the railway and the steamship company?

A. He signs—for instance, the Texas and Pacific agents sign for large quantities of cotton by the Hammond line in the interior, and when it comes to us we name the steamship or sea rate.

Q. And those bills of ladings are signed in that way by the railroad agent in the interior in a form somewhat similar to this: "I affirm to three bills of lading of this tenor and date one of which being accomplished the others to stand void," &c. is not that it?

A. Yes, sir; the railroad agent signs by the Hammond line the same as they sign by the Harrison line.

Q. And you accept those bills of lading in the case where
92 you do not get a special local bill of lading out for the sea lines?

A. We accept them and give what is called a master's receipt, which master's receipt incorporates the contents of the through bill of lading; that is, the bill of lading which the railroad agent signs.

Redirect examination by Mr. CLEVELAND:

Q. Mr. Hammond, when the railroad companies sign a bill of lading on behalf of the steamship company, you understand that only applies as to the rate?

A. We have nothing to do with it—we never give any power to any railroad to sign, we take no responsibility until the cotton is in possession of the steamer.

Q. Has the railroad company any authority to bind you by the conditions of a bill of lading?

A. No road can bind us; we can only be bound by our contract or engagement, which reads according to the rules of the maritime association.

Q. Prior to the erection of this dock, was Westwego considered commercially within the port of New Orleans?

Objected to. Objection sustained. Exception by plaintiffs.

Defendant's counsel reads from the deposition:

Recross-examination:

Q. After the erection of the dock it was recognized as commercially within the port of New Orleans—there were regular deliveries at Westwego?

A. We called it New Orleans although it wasn't officially New Orleans.

Q. And under bills of lading for shipment by the Texas and Pacific it means New Orleans, and the Hammond and various lines of steamers received cotton continuously at Westwego, did they not?

A. Yes, sir; since the erection of this dock.

93 W. P. Ross, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am a steamship agent, and have been such in the city of New Orleans 25 years. In November, 1894, I was a member of the firm of Ross, Howe & Morrow, and we handled a large number of steamers, mostly on what they call the "tramp" order. I recollect the labor troubles that existed in New Orleans in October and November, 1894.

Q. Will you give me some account of them, their origin, cause, extent, &c.?

A. They originated in a dispute between the white and colored screwmen, by which the white screwmen boycotted the colored men, or rather, boycotted any employers who employed colored labor, and it reached a very serious condition of affairs, where business was entirely upset and a great deal of business driven away. There was a great deal of rioting and trouble. I recollect the time of the burning at Westwego. I don't recollect the exact date.

Q. At that time had those labor troubles ceased or were they still in existence?

A. They continued off and on during the whole of the winter, from say October. I recollect the burning of the West India docks.

Q. At that time what was the condition of the labor trouble?

A. Well, I don't know that I can explain it further than to say that there was a very considerable feeling of unrest, uncertainty and of fear of what was going to happen. Prior to 1894 I had been engaged in business as a steamship agent about 25 years, about 21 years in New Orleans, something of that sort.

Q. Prior to 1894 did you represent the same line?

A. Well, they varied, you know. In 1893 and 1894 we usually loaded our ships at Sixth street in the city of New Orleans. This was prior to 1894 also. We did not have any other dock in
94 the port of New Orleans that was specially assigned to us. These lines were engaged in carrying all kinds of goods to various ports in Europe. They carried cotton. Prior to the erection of the dock at Westwego, which was destroyed by fire on November 12, 1894, cotton was delivered to my lines for transportation by other parties and the different railroads in town. Some by the Texas and Pacific Railway Company. It was delivered to us by the Texas and Pacific Railway Co. at our regular wharf. It was delivered by all the railroads at our regular wharf; after the erection of these docks at Westwego, cotton was delivered to my

line mainly at the same place. I am familiar with Westwego, but I have not been there recently.

Q. Will you please describe Westwego as it existed prior to the erection of this dock?

A. Just an ordinary levee; there were docks there, I think there was a small one. I recollect landing once in a small ferry-boat. There were no steamship wharves, to my recollection, except occasionally we would discharge railroad iron.

Q. Were there any facilities for loading steamships at Westwego prior to the erection of these docks?

A. Not for handling cotton.

Q. Prior to the erection of this dock, Mr. Ross, was any commercial business done at Westwego, to your knowledge?

A. I don't remember anything, except the discharge of railroad iron; might have been some.

Q. You are familiar with the customs and usages existing at New Orleans relative to the shipments of cotton from this place to foreign ports?

A. Yes, sir; I never did much business there, but I am familiar with what is the usage in that respect—was familiar with these customs in 1893 and 1894.

Q. Did you ever know any vessel to load or discharge at Westwego prior to the erection of these docks?

A. I don't remember any vessel discharging, except perhaps it was railroad iron, and I think that there was some cross-ties loaded there.

95 When, first, to your knowledge, was any freight delivered to a steamship at Westwego?

A. To my knowledge, after the wharves were built there—I forget the exact date of that. Prior to the erection of those wharves, no cotton was ever delivered to my line in Westwego.

Q. When, first, was it so delivered?

A. Well, I don't think we ever sent any ships there; or ships there for cotton at all the early part of the season, when the wharves were burned. It may be we had some there before, but I don't think so.

Q. According to the customs and usages of the port of New Orleans, as they existed prior to the season of 1893 and 1894, would cotton consigned to a foreign port have been delivered to a ship at Westwego?

Objected to. Objection sustained. Exception by plaintiffs.

Q. Did you ever know of any cotton shipped on any railroad from any part of Texas, destined for a foreign port, to be delivered at Westwego on board a steamship, in 1894, without some special arrangement not stated in the bill of lading, having been made between the railroad and the steamship line?

A. No, sir; there would be a contract under which it was shipped to take the cotton. That contract was made between either the shipper or by the railroad and the steamship agent.

Q. At the time of the fire was Westwego commercially the same as the port of New Orleans?

A. Now, I don't recollect the time that it was brought in by act of Congress. It was not so considered before that act was passed, only by courtesy and agreement. Agreement between the railroad and the ship, or the shipper and the ship.

Q. In 1893 and 1894 under what circumstances do you know of any vessels going to Westwego to receive cotton?

A. Well, I can only speak of my own ships; I went there very little, and then only by special agreement either with the
96 railroad or the shipper. That agreement was that we would go to Westwego for a certain amount of cotton at a certain time. We would not go there for any amount of cotton that was there. We would have special contracts for certain amounts. We would agree for a certain minimum amount that we would go there at certain times. The minimum amount for which I would go to Westwego, according to my recollection, was probably in the neighborhood of two thousand bales; something of that sort.

Q. In 1893–1894 do you say that you would not send your vessels to Westwego for less than two thousand bales?

A. That's my recollection of it, as to the amount that we stipulated as the minimum for any one ship. I don't think we ever had any agreement or contract with the Texas and Pacific railway to go to Westwego for less than two thousand bales. I don't think we did.

Q. Did you ever know of a vessel going to Westwego to load cargo without having made some special arrangement with the railroad Co.?

A. No, sir; none of my ships.

Q. In 1893–'94, if the Texas and Pacific had offered you, for transportation on a vessel of your line, less than two thousand bales of cotton, where, by the custom of the port of New Orleans, would such cotton have been received by you?

A. Unless we had made an agreement to go to Westwego, they would have had to deliver it at our regular wharves. Cotton was delivered at my wharf in New Orleans by drays or by the freight lines, by the shipper or railroad. I never paid for such transportation to my recollection.

Q. How was cotton received by you, Mr. Ross, for transportation on your ships, on docks other than your own?

A. Well, if we were crowded at our own wharves, we might arrange to load ships at some other wharf, and then we would receive it in the same manner.

Q. Please state whether or not such cotton was required to
97 be placed at any particular point before it could be receipted for by the officer of the ship whose duty it was to receive it.

A. Had to be placed abreast of the ship—at the edge of the wharf. The particular term for that, according to the rules of the port of New Orleans, is "within reach of the ship's tackle," and that is what is usually meant in that clause of the article. "Within reach of the ship's tackle" means, literally, that it must be where the ship's

"falls" can reach it, but it is modified by custom, especially in the case of cotton.

Q. How was delivery of cotton made, as to the length from the ship?

A. Has to be abreast of her, that is, if the ship is 300 feet long, it is within that 300 feet and at the outer edge of the wharf. The drays back up and it is dumped on to the wood-work of the wharf. Those wharves run from 70 to 100 feet wide. If cotton tendered to a ship of my line, at a dock other than the dock of my line, had not been within reach of the ship's tackle, such tender would not have been good, according to the customs of the port of New Orleans unless by agreement. I mean to say that in the absence of an agreement, if this cotton which was to be transported in my ship, had been brought by the railroad company to a point not within reach of the ship's tackle, the officer of the ship, if he followed the custom of the port in that respect, would refuse to receive it until it was brought within reach of the ship's tackle. I may have paid for the truckage or carriage of cotton from a point not within reach of the ship's tackle to a point within reach of the ship's tackle under some special agreement, but irrespective of any special agreement, I don't remember.

Defendant's counsel reads from the deposition, as follows:

Cross-examination by Mr. TAGGART:

Q. Mr. Ross, did you represent any particular line of
98 steamers in 1894, or was it simply "tramp" steamers that would come and go?

A. We represented the French line; I believe the Anchor line, and most of the rest of the business was "tramp" business. Some of these lines were regular and some were running occasionally, as business demanded. I did not have any cotton on the wharf at Westwego destined for any of my lines, at the time of the fire. I don't think I had any engagements for cotton with the Texas and Pacific railway outstanding at the time of the fire.

Q. You speak of special arrangements with the railroad company for delivery at Westwego; do you mean an arrangement such as has been testified to here, by which there would be an engagement for a stipulated number of bales of cotton at a certain sea rate, and the railroad company would thereupon go into the interior and arrange with shippers for the shipment of that cotton over their own lines and over the steamship lines with which the sea rate was made?

A. I mean, the railroad would make a contract with the steamship agent, just exactly as any shipper would do, for the carriage of a certain amount of cotton on the terms specified in that contract, that was the special arrangement I refer to. A part of that special arrangement would be that I would go to take such freight at Westwego.

Q. Don't you know that under those steamship contracts, when they would speak of a sea rate, we would say of 49 cents a hundred

pounds, from New Orleans to Liverpool, that it was the general custom, without specifically mentioning Westwego in the contract, for the steamships to receive that cotton at Westwego?

A. Most positively, no.

Q. You don't know?

A. Most positively, not.

Q. You say, in your case, Westwego was always named as the place of delivery, if it was the place of delivery?

A. I say, when we went to Westwego, we did so under a special arrangement to go there. And not otherwise.

99 Q. Then, if no place was named in the contract, fixing the sea rate, Westwego would not be the point of delivery, according to your understanding?

A. Not without a special agreement; no, sir.

Q. That special agreement as to delivery, do you know whether that was expressed in these contracts respecting the sea rate or not?

A. I don't know what was done with other agents, but in my office it was always expressed; I did very little business with the Texas and Pacific.

Q. You don't know how it was with the other steamship companies which did the bulk of the business?

A. I don't know how they managed their business.

Q. You know, however, that a large amount of export cotton after the wharf at Westwego was built, was delivered to the steamship lines at Westwego?

A. Yes, sir.

Q. And that the delivery of export cotton at any other point, by the Texas and Pacific, had almost entirely ceased, had it not?

A. As far as direct arrangement between the railroad and ships wes concerned.

Q. As far as you know, the delivery of export cotton by the Texas and Pacific railway at any point other than Westwego had largely ceased, had it not?

A. As far as any direct engagement with the Texas and Pacific on through bills of lading, it did, but it did not cease as far as other export cotton was concerned.

Q. That is, export cotton originating at New Orleans—local shipments—it did not cease?

A. Coming from the Texas and Pacific.

Q. Coming from the Texas and Pacific railroad—that would be what they call F. O. B. cotton?

A. Yes, sir.

Q. But so far as other cotton was concerned, the delivery would have been at Westwego, as you understand it?

A. Yes, sir.

Q. But cotton on other bills of lading, embodying the inland or rail rate or the ocean or steamship rate, was largely delivered,

100 if not entirely so at Westwego, if there was no other stipulation in making the agreement?

A. Yes, sir.

Q. Well, do you know that they made any express stipulation in any agreement without first having the steamship rate?

A. I can't say what was done in that respect. I made the stipulation in that regard in my own case, but I don't know as to the others, naturally.

Q. Now, did you ship anything else at Westwego than cotton?

A. I don't remember going there for anything, except by special agreement.

Q. But you did make large shipments of other things than cotton?

A. Oh, yes; we had a ship up there just finished at the time of the fire. We were shipping oil cake on her. That was a shipment made by a local party in New Orleans. A shipment made locally; that is, a local shipper had arranged for my ship to call at Westwego to take the freight. That was my point of reception for that freight. It was not on a through bill of lading issued originally by the Texas and Pacific Railroad Company to my recollection. I was accustomed to call there for staves, too, whenever the amount was sufficient and it suited us to do so. My arrangement for the shipment of this oil cake was an arrangement made with the shipper. He told us that he had a certain quantity over there, told us what the quantity was, and we agreed to call at Westwego for it at a certain rate per 100 pounds or ton for Liverpool or wherever it was destined for. That is all the arrangement I made about taking that shipment. And all I was required to make. When I learned it was there ready for shipment I sent the steamship over there for it and got it. Of course, we had to see that the wharf was clear. We were in communication with them by telephone. That was the extent of the arrangement I made, and all I had to do was to ascertain whether there was a place there at which the ship could load.

101 M. J. SANDERS, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am a steamship agent at New Orleans, and was such in 1894. I represented the West India and Pacific Steamship Company. I had represented that company in New Orleans about ten years prior to that time. Our regular wharf is at the foot of Celeste street, in the city of New Orleans. We did not have any other dock in the port of New Orleans. That line was engaged in general transportation, carrying freight to and from New Orleans; we carried cotton.

Q. Prior to the erection of the dock at Westwego, which was destroyed in November, 1894, where was cotton delivered to your line for transportation?

A. Well, we had cotton delivered to us at the different railway terminals and at our own wharf.

Q. Where were the terminals at which cotton was delivered to you?

A. There was the Illinois Central terminal at Southport. I think

at that time we used the Southern Pacific at Gretna, and I suppose the Texas and Pacific at Westwego also.

Q. I am speaking of the time prior to the erection of this dock.

A. I presume the Texas and Pacific was then delivered to us at our own wharf, but are you not wrong about the date of the erection of the Westwego wharf? I don't think I know exactly the date, but prior to that time I think the cotton would be delivered to us on the city front at our wharf.

Q. After the erection of this dock at Westwego, where was cotton delivered to you for transportation by the Texas and Pacific railroad?

A. At Westwego, as a rule. I could not state how much cotton was delivered to us at Westwego. I could not give you the exact quantity.

102 Q. During the season of 1893–'94, there was considerable cotton delivered to your line by the Texas and Pacific Company at your wharf?

A. That I can't say without referring to my books, but I presume there was, the rule being that if they had over there at any time, say 2,000 bales, we would go to Westwego for it, and if they had a small quantity which they wished us to take, perhaps part of an accumulation, say less than two or three thousand bales, it would be delivered at our wharf.

Q. You were familiar with Westwego, Mr. Sanders?

A. Yes, sir.

Q. Will you describe Westwego as it existed prior to the erection of this dock?

A. Well, I didn't know it prior to the erection of the dock, except as a part of the general river front, without any improvements on it. I don't think there was any dock there nor any facilities for loading ships there. I don't think there was any commercial business done there prior to the erection of this dock. I never knew of any vessel loading or discharging cargo at Westwego prior to the erection of this dock. I was familiar with the customs and usages existing in the port of New Orleans relative to the shipments of cotton from that place to foreign ports; and was familiar with such custom and usage in 1893–1894.

Q. When first, to your knowledge, was any freight delivered to a steamship at Westwego?

A. That I can't answer with any exactness without referring to my books, beyond saying that it would be since the Texas and Pacific railroad had built their wharves there.

Q. What kind of freight is handled at Westwego?

A. Mostly cotton, until they erected a grain elevator, and then it was grain also. Through cotton—yes, sir; nothing but through cotton. I don't think that cotton consigned to New Orleans was ever delivered there.

103 Q. According to custom and usage in the port of New Orleans, as it existed prior to the season of 1893–1894, would cotton consigned to a foreign port have been delivered to a ship at Westwego.

Objected to. Objection sustained. Exception by plaintiffs.

Q. In November, 1894, did you have any arrangement with the Texas and Pacific Railroad Company relative to the receipt of cotton by you from it?

A. It is difficult for me to answer that without my books again, but I have no doubt that I had engagements with the Texas and Pacific Company at that time.

Q. In November, 1894, Mr. Sanders, did you have any contract or arrangement with the Texas and Pacific Railroad Company relative to the number of bales of cotton that would be delivered to your ships?

A. We had a general understanding that we would not send the vessels to Westwego, unless there was a certain quantity of cotton ready for delivery to us at one time; that quantity, I believe, was fixed at 1,500 to 3,000 bales, and we would not send our vessels for a smaller quantity than, say 2,000 bales. If the railroad had less than 1,500 bales of cotton for transportation over our lines it would have been delivered to us in November, 1894, at our own wharf, at the foot of Celeste street. I never had any arrangement or contract with the Texas and Pacific Railroad Company to go to Westwego for less than 1,500 bales that I know of.

Q. Did you ever know of a vessel going to Westwego to load cargo without having some special arrangement with the railroad company?

A. I don't know of any such arrangement. Of course, each ship agent would make his own arrangement on such a matter as that.

Q. How was cotton delivered on your wharf in New Orleans by the railroad company?

A. By the Texas and Pacific Railroad Company, I think, usually by dray. The railroad paid for the draying.

104 Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

Q. Mr. Sanders, you speak of an arrangement with the railway company for taking cotton at Westwego; that was an arrangement for booking cotton at a special rate per 100 pounds—a sea rate?

A. Yes, sir.

Q. Those bookings were made from time to time, and for different amounts?

A. Yes, sir.

Q. And, after this wharf at Westwego was built, those bookings continued just the same as before, did they not, sir?

A. Yes, sir.

Q. And under those bookings, at a rate of a certain number of cents per 100 pounds, sea rate, the railroad company would go into the interior and arrange with shippers for a shipment at a certain through rate?

A. That is the way I understood.

Q. Which would be a combination of the railroad rate and your agreed sea rate?

A. Yes, sir.

Q. And the railroad agent would issue through bills of lading to the shipper?

A. Yes, sir.

Q. Before this wharf was constructed at Westwego, on that export cotton, or through cotton, the place for delivery would be at a wharf on the city front in New Orleans?

A. As a rule, yes, sir.

Q. As a rule, was it sometimes at the Texas and Pacific wharf in New Orleans?

A. I think on occasions it has been at the Texas and Pacific wharf on the New Orleans side.

Q. And at other *other* times at a wharf of a particular steamship line?

A. Yes, sir.

Q. Now, after Westwego was opened, then cotton shipped in that way, was shipped to Westwego and there received by the steamship lines, was it not?

A. As a rule, with the modification that I have already mentioned, that a certain quantity or number of bales must be there at one time, for delivery.

105 Q. Was that ever embodied in any agreement with the railroad, or was it simply a general statement by the steamship lines, that it would not pay them to go there for less than about 2,000 bales?

A. I think, so far as my line is concerned, my understanding is that it was probably in writing. I think it was in writing. I won't be positive about that. I won't say that positively. I am not positive about the agreement being in writing, but I should be inclined to think, now, that it was; but I think that after the erection of the wharf at Westwego all cotton was loaded there, that is, all export cotton, so far as our lines was concerned.

Q. That is the delivery of export cotton, in the city of New Orleans, along the front, had about practically ceased?

A. Yes, sir.

Q. And in the season of 1894, after the season opened, the bookings would be made then for account of any of the main lines of steamships here in the city, would it not?

A. Yes, sir.

Q. At any time?

A. I should think so.

Q. And particularly during the months of October and November, when the shipments were very heavy?

A. Oh, yes.

Q. Now, these through bills of lading which were issued you, you have seen them from time to time, have you not?

A. Yes, sir.

Q. They were regularly issued by the railway companies on

behalf of the railway and steamship companies, together, were they not?

A. Yes, sir.

Q. Covering both parties of the line, the ocean line and the rail line?

A. Yes.

Q. And copies of them would go to the steamship lines, would they not?

A. Yes, sir.

Q. And the railway part of the line, was usually described as from the point of shipment to New Orleans, was it not?

A. Yes, sir.

Q. And the ocean or steamship part of the line was New Orleans to Liverpool or whatever the port the cotton was destined for?

A. Yes, sir.

Q. And the point of delivery from the railway company
106 to the steamship line under that class of bills of lading was always understood to be Westwego, was it not?

A. Yes, sir; under the modifications I have expressed.

Q. And that even where the bookings did not express that, the port of delivery was at Westwego?

A. Yes, sir.

Q. There were other shipments from Westwego than cotton, was there not? That is, other articles were shipped from there besides cotton and grain?

A. Yes, I think there were, though I am not sure that in 1894 shipments other than cotton or grain amounted to anything of moment.

Q. Were there not considerable shipments of oil meal and cake?

A. Not over our line. I can't speak for the other lines.

Q. Didn't you have a considerable amount of staves or hard wood?

A. I don't think we had at that time, but there has been quite a trade since then. Our line handled principally grain and cotton, those articles constituted the principal part of shipments by our line.

Q. The grain wharf was practically part of the cotton wharf, at Westwego?

A. Well, there was a gangway on the front of the grain-carrier, which connected with the cotton wharf, but it is not of sufficient width to enable any loading of cotton at the grain wharf. Our line of steamships runs regularly from New Orleans to Liverpool.

Q. And how frequently, once a week or twice a week, or how?

A. Well, in the winter season, twice a week.

JOSEPH W. COFFEY, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

My name is Joseph W. Coffey; I am employed at the Boston warehouse, and am twenty-eight years old. I reside in New Orleans

and have resided there all my life. I was employed at one time by the Texas and Pacific Railway Company. I was first
107 so employed in the season of 1893. It was not quite the fall of 1893 when I began. I labored for a while before the fall season had actually set in. In 1893 I began by working around the freight sheds, laboring. During the season of 1893–'94, after the business picked up, I obtained a position as check clerk at the Thalia Street depot. During the season of 1893–1894 I worked at Westwego. I don't recollect just about what time I went up there, but I was transferred up there. I think the season was pretty well advanced. I worked up there in 1894 until the season was over; I think it was about March or April; as check clerk. After March or April I remained in the employment of the Texas and Pacific Railway Company for a little while. I am not too positive about these months—these dates; but I remember, after leaving Westwego, I came back to Thalia street and labored. I was there a month or two after that. In the summer of 1894 I traveled for a publishing house in New Orleans. I left the employment of the railway company; I don't know that I done it of my own accord; there wasn't anything more to do.

Q. They dispensed with your services and you got other employment?

A. Well, that is about what it was. There wasn't enough work. I would only make a day or two out of a week, and I left. I was reemployed by them the following season. I went to work in September of 1894. I began to work in September, right at Westwego. I think I watched a day or two—maybe a week. Then I checked. As a check clerk—we would be handed a copy of the bills, that is, what we called a skeleton, and we would check the freight from that. We would get what we call a skeleton waybill covering a shipment, say, of cotton, the marks of the cotton and the number of bales, and we would see that the marks of cotton came out as entered on the waybill and the amount of the cotton. I had a gang of laborers under me. In 1894, my immediate superior or boss or fore-
108 man, at the beginning of the season was a man by the name of Woodruff who was, I understood, the foreman. The chief clerk, Mr. Wilkinson, told me to go to him for advice. Mr. Wilkinson was superintendent at the cotton wharf. He was not the superintendent during the previous year. He came up there in the latter part of the previous season as clerk. Then in the season of 1894–1895 he was made superintendent; he took charge.

I usually worked seven laborers under me in checking cotton. I directed the laborers where to put the cotton, the seven men that I had in charge. In the course of my duty I would place cotton in the shed, on the dock, whenever we would find room, except there was different places allotted to different shipments, for instance, Bremen had a particular spot as long as we could hold it. Havre would have another particular place, and so on. We had a place where we would put the Liverpool cotton. We adhered pretty much to that classification, as much as possible. In directing the laborers where to place the cotton I visited the different portions of

the sheds. I went all over the sheds. From September, 1894, I think, I continued to work there as check clerk until about February, I think it was, and then I was given a position as night watchman, in 1895. I don't know how long I remained as night watchman, I suppose about two months. After that in the season of 1895–1896 I moved over to Westwego and kept a boarding-house, made arrangements to have a boarding-house there. Done a little planting and so on, just enough to make a comfortable living. I moved from over there about August, 1896, and I am now engaged by the Boston Warehouse Company.

I don't recollect exactly the date of the fire at Westwego. I heard the other day it was the 12th. I thought it was between the 10th and 20th. But I recollect the fire, whatever the date was. I was working there the day of the fire. I had been working continuously prior to that time for some time before that as check clerk.

109 Q. Now, Mr. Coffey, will you be good enough to describe to us the condition of the sheds, as far as the cotton is concerned, as they existed on November 12th, which was the day of the fire; describe how the sheds were filled with cotton; whether they were filled with cotton?

A. Well, pretty well full, it was piled all over the shed, sir, and there was a space between the two sheds that was not covered and there was cotton piled up there. That portion that I speak of had no wooden covering over it. Cotton was piled there. At the end of No. 2 shed, between that and the end of the wharf some cotton was headed up out there on the river edge.

Q. Between the track and the river was there any cotton piled?

A. There was two tracks—one on the end of the wharf and one on the river end of the wharf. There was one track between the shed and the river. There was cotton between that track and the river. That cotton was just headed up. I don't know the number of bales that were headed on that space between the track and the river on the day of the fire. That amount of space I think would hold between two and three hundred bales headed up—more or less. I did not count them. It was a part of my duty at that time to deliver the cotton. I used to help the laborers when there would be two vessels. I don't think there were any vessels loading cotton on the 12th day of November. I can't tell how long before November 12th I had delivered any cotton to a ship.

Q. Now please to describe how near the bales of cotton came to the inner rail of the track which was between the shed and the river?

A. It came to the edge of the shed, and, in some instances, we would let the bale project a little over the edge of the shed about four or five feet; four feet anyhow from the inner rail of the track. There was cotton placed four feet from the rail. That was stored. By stored I mean just piled up. Each bale placed flat.

Q. How was the cotton piled through the sheds—how
110 many tiers high?

A. I should judge eight or nine bales high. There were gangways running across the shed about three or four to each shed.

Q. And between each gangway how many lengths or tiers of cotton were there running from the river?

A. I couldn't say that. About three or four gangways to the shed. I don't recollect how many lengths of cotton there were between any of the two gangways. It didn't run in lengths over the shed; it would run in the width—I mean so many tiers, one tier this way and another at the side.

Q. How wide were those gangways that ran across the sheds?

A. Usually two, six or seven feet wide; wide enough on November 12th to run a bale of cotton through on its side. These gangways were large enough to allow the passage of trucks; one truck could go through with one bale on it. They were not large enough then to have two trucks pass each other in the gangway. About November 12th, as near as I can recollect it, these gangways were a little crowded, and my instructions were to head some of the cotton up against the tiers, in order to save room and unload the cars. In the gangways I mean; but always leave room enough for one truck to go through.

Q. And then this cotton that was piled up in the gangways; did you put any cotton on top of those bales?

A. Some little, yes, sir; two or three bales. We had to save room; we put them on top of the bales headed up.

On November 12th before the fire I was checking; I might have turned out some few bales of cotton; I might have done that during the day. When I knocked off on November 12th it was about 22 or 23 minutes after five. We usually knocked off at half past five. I don't recollect why I knocked off earlier that day, except it might have been that I completed my car just about that time, and there was not time between then and half past five to justify me in opening another one. I could not give you an estimate of how
111 much more room there was on that dock for stowing cotton after I ceased work on November 12th. I don't think there was very much, though. I should think possibly there might have been half a day's more work, that is, unloading.

Q. At the close of each day's work do you know what was done in relation to the cars that had been unloaded, what was done with the cars that were unloaded; were they left there?

A. Only left there temporarily; but after that they were pulled out the last thing every evening. As a general thing we would go there in the morning and find full cars, whether they were put there the night before or in the morning I couldn't say; but the last thing in the evening they would pull the empty ones out and bring a loaded one in. We would find loaded ones there in the morning. There were two tracks on the wood side of the shed. I should judge those tracks extended about thirty or fifty yards above the further end of No. 2 shed—room enough to haul about two or three box cars. The cotton was not unloaded from the cars that were run on the track on the river side of the shed. I don't recollect of their loading or unloading cotton there. Cars were run there for staves

and meal and seed, but not for cotton. I don't recollect of unloading cotton.

I did not have any charge of the fire apparatus on the dock at all. Mr. Wilkinson was the superintendent. Mr. Woodruff was the foreman for a while, and in November, 1894, Frank S. Sykes.

Q. Did you observe while you were there the conduct of Mr. Wilkinson enough to tell us what his habits were?

A. Well, I couldn't help observing them; yes, sir. He would appear there now and then pretty well drunk.

Q. You have seen him drunk during business hours?

A. I have seen him drunk.

Q. Frequently or infrequently?

A. I don't know what answer to give to that. I have seen
112 him occasionally, maybe once or twice a week, when I noticed he had been drinking. I have noticed some fire-hose there on the small platform. I never saw that hose stretched that I know of. They never stretched it at night, that I know of. The posts at which the hose was were in the center of the shed, taking the river and the woods side of the sheds. I never measured the sheds. I have noticed the plugs to which the hose was attacked or near which the hose was. I should judge they were about an ordinary man's height from the floor of the wharf; maybe a foot or two higher. The platform was I suppose about half a foot higher than the end of the plug. These piles of cotton reached higher than the platform.

Q. Will you please describe a little more fully, if you can, the stowing of these bales of cotton in the sheds?

A. They usually run, whenever we would observe the rule, they would run what we call a bulkhead. That would be the highest part of the tier of cotton. We would measure out, as a general thing, our place for stowing, and make allowance to get 50 bales in, or so many bales as we could, from the river side to the woods. We would begin on the river edge of the shed up towards the woods and run our bulkhead up and our tier up and then back to this wooden bulkhead again, and run it this way.

Q. That is, the straight part of these piles would be next to each other?

A. Would be back to back. I did not know, at any time, of reports being made of how many bales of cotton there were in the shed from day to day; but I understood it was an evening occurrence. I don't know who made the immediate report, but I think the foreman was supposed to make the report to the office clerks. There was no telegraph operator in the office on the sheds. There was a telegraph operator at Westwego, at the elevator office. That office was about two or three hundred yards from the elevator, I suppose. I never
measured the size of the pipe that led through the centre of
113 the shed prior to the fire. I only know of one water pipe being underneath the floor of the shed. I have no knowledge of how that pipe was fed. I understood it was fed from that large tank beside the elevator. I do not know the capacity of that tank. I don't know exactly the height of the bottom of it from the ground.

I should judge that it would be about 10 or 15 feet up, between 10 or 15 feet.

Q. Was the floor of the wharf higher or lower than the levee where the track ran?

A. There was no track where the levee ran. The track was away inside of the levee. There was only one levee on the inside track, or the track that runs along the woods side of the sheds did not run on the levee; it ran on an elevated bedding for the tracks. It was not the same height*h* as the levee; it was arranged so it would place cars on the same height*h* as the wharf. The levee was a great deal higher than this track; it was quite a distance up from it. I should judge the levee was about on an equal height*h* with the flooring of the wharf. I have noticed the construction of the tank that was near the elevator, and I want to call your attention to something that I said about that. I said 12 or 15 feet, but it was higher than that. From the bottom of the tank to the ground was more than fifteen feet.

Q. What did that tank rest upon?

A. Well, I don't know what you would call them—piles or scantling, 4-inch. The foundation of the structure upon which the tank rested, was below the level of the levee. I couldn't say how much the foundation of that structure upon which the tank rests is below the level of the ground surrounding it.

Cotton was piled in the open space between the two sheds, the same as under the shed, about eight or nine bales high. Some parts of it were covered, I think, at that time; I am not too positive though. I don't know how many tiers there were in that open space. I know there was about as much as we could get in there. I
114 couldn't say whether there was any empty space in which we could put any more cotton. I don't recollect of any empty space there. We never worried ourselves about any empty space until morning. We just went around looking where we could put the cotton the handiest and easiest. When I was looking around on the morning of November 12th, where to put the cotton, I didn't have any difficulty in finding an empty space; not on the jump—not first off—but we had a little more work towards evening, finding any empty space. I couldn't tell how much cotton I unloaded during the day of November 12th. An average day's work in stowing cotton would be about seven or eight cars for the gang. I lived at that time at New Orleans. I first heard of the fire after I had gotten home, sitting down eating supper. I suppose I had been eating ten or fifteen minutes when I heard of it. I should judge it was about half past six or seven o'clock, somewhere, when I first heard of it. I was about a mile from the New Orleans side of the Westwego ferry, I think. I don't recollect receiving any general instructions from Mr. Wilkinson as to unloading cotton; we usually got instructions from the foreman, that was Mr. Sykes. I got no instructions from him unless there was something unusual to be done. I was instructed every night where to store, how to store and how to check cotton. He sometimes gave us instructions as to any haste in unloading. Maybe at times he would come out and tell us

boys, "Well, hurry up folks, we want some empties; let's see what we can do today," and then we would urge the negroes on.

Q. Now, particularly, a few days prior to November 12th and on November 12th, will you state how the different lots of cotton in those sheds were stowed, I mean as to their destination? Were they kept separate?

A. I think they were, yes, sir.

Q. Was all the Bremen cotton in the Bremen place?

A. The Bremen place. It was our aim to keep it, as near
115 as we could, in a separate place. Liverpool cotton the same way. I think there was a place for Havre cotton at that time.

I should judge there was about eight feet of clear space of platform on the floor between the woods side of the platform and the first cotton; something like eight feet. We begun to pile cotton there. With the exception of the cotton that was headed in the gangways I do not know of any cotton that was headed under the sheds at that time. The flooring of this dock was wood; wooden planks. They were placed close together at that time, I think; I don't think there were any cracks between at that time.

Defendant's counsel reads from the deposition, as follows:

Cross-examination by Mr. TAGGART:

I think I left Westwego wharf on the evening of November 12th on the first ferry-boat after knocking off work. I don't know about what time the ferry-boat left that evening. I should judge that it couldn't be very long because a number of the boys missed it, and it must have been owing to that that they missed it. It must have left immediately or shortly after. I went right home, and after being at home a time I had my supper; and while I was at supper I heard of this Westwego fire. One of my sisters opened the back door and told me there was a fire. That is from showing the reflection. I don't know the exact time. I went over to Westwego some time after. I finished eating, which I suppose took about 10 minutes more—10 or 15 minutes. I started to walk, and I suppose it took me 15 or 20 minutes to the ferry; and after I got up there I remained there about 15 or 20 minutes or half an hour, and then crossed over on the next boat. When I got up to the ferry I could see clear across to Westwego from this side of the river. I got to
the Westwego ferry on the New Orleans side about seven or a
116 quarter after seven; something like that. The wharf and sheds at that time were all a mass of blaze. That is, the cotton sheds. The wharf that we are speaking of. Nos. 1 and 2 sheds. This tank that I was inquired of was a tank of considerable size, a good big tank. I don't know what the foundation was; there was some heavy timber on top of that, scantling or spiling. I wouldn't want to say what was the height of that portion of the tank from the roof because I haven't the slightest idea as to measurements. The tank itself—the body of the tank—was placed on top of this heavy timber frame.

The tank itself was of considerable height, a great big height. It was more than fifteen feet. I corrected my statement. I did say about fifteen feet, but I corrected it and said it was more. I don't know how many feet it was though.

As I recollect the situation the tank was higher than the floor of the sheds where the cotton was stored. I should think that it was higher than the roof of the shed. This cotton platform or wharf on which sheds Nos. 1 and 2 were erected was between the levee and the river. And in times of ordinary high water, that high water would come under the wharf. Not all the water entered under there though except in unusually high water.

PAUL J. LECORGNE, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

My name is Paul J. Lecorgne; I reside in New Orleans, and am a clerk. I was formerly in the employment of the Texas and Pacific Railway Company. I first worked for them in 1893 a few months, and went to work for them in 1894. I really couldn't say what two months in 1893. I think it was in the early part of the season. In 1894 I think I started—I know I worked up to September, I
117 think it was. I worked there until November 12, 1894, the time of the fire. I was discharged the next day. I have since worked for them. I think, two or three weeks at the Merchants' warehouse. We went from Westwego to the Merchants' warehouse after the fire. After that I worked for the National Cracker Company; done a little coffee and tea business, and from there into the cigar business.

In November, 1894, I was a check clerk for the railway company.

Q. Will you please to describe to me what duties a check clerk performed?

A. Well, it's this way. We get a bill and go to the cars, when there is a car with cotton, check it as it came out, and whatever post we would place it at, mark it on a tag and put it on the cotton. In November, 1894, I lived on Magazine, near Upperline, in New Orleans. I was employed at Westwego. My hours of work at Westwego were from seven until half past five, and sometimes it was six when we would leave there. I worked at this checking business all the time. During October and November, 1894, I think there was at least four or five other check clerks there. My immediate superior or foreman or boss was a young man by the name of Sykes. I don't know where he is now. I was at work on November 12, 1894, checking as usual. Cars loaded with cotton discharged the cotton at the wood side of the shed, as I called it, that is toward the land side.

Q. Will you please to describe the condition of the sheds on this dock as they existed on November 12, 1894?

A. Well, the cotton was very crowded on the platform from one end to the other, hardly any room for any more. There were two

sheds, one called No. 1 and No. 2. No. 1 was the one nearest the elevator.

Q. Take No. 2 shed, the one furthest up the river, and then describe to me a little more fully, if you will, its condition as to cotton.

A. Well, it was very crowded. In fact, both were very crowded; just as crowded as could be. I don't think there could have been any more bales put on the platform. Cotton was stowed be-
118 tween the eave of the shed toward the river and the track between the sheds and the river; it extended out toward the inner rail of that track that was between the shed and the river, just enough that a man could pass in some places; very close.

Q. Will you describe how it was piled up there?

A. Well, some piles would run out, and we would store it up, starting from the shed, very high, and go down, and some was stowed sideways; in fact, stowed as best we could put there. I think it averaged nine bales high. It came within a couple of feet of the roof. I suppose, in some places it was very high. There were no gangways lengthwise of No. 2 shed, running parallel to the river. There were gangways that were across the shed. I will say three to four in each shed. We were supposed to leave gangways to run from where we unloaded the cars to the river front, and I suppose between each we had about four piles crosswise, and in between each we would leave a gangway. That is, between each gangway there were four piles of cotton. The cotton was all piled or stored at that time. There were four lengths of cotton about, between the gangways. Some of these gangways were about five feet wide and others just enough to leave a truck go through there sometimes.

Q. You have said that cotton was stowed outside of the line of the eaves of the shed toward the track that was between the sheds and the river. Do you mean to say that that was so, as to both sheds, or only as to No. 2 shed?

A. Both sheds. And the description that I have given of these gangways applies to No. 1 shed as well as to No. 2.

Q. Tell me whether there was any space between the upper end of No. 2 shed and the end of the wharf. The upper end of No. 2 and the end of the dock. Was there any wharf there, or dock?

A. There was a small piece of dock, but it was taken up by cot-
119 ton. Cotton was stowed there also. There was a space between these sheds, a square, I will say, and cotton stowed around it. The two sheds were separate.

By an open space between the sheds, I mean there was no floor there. Cotton was stowed between the sheds, in the space that existed between the sheds where there was planking; cotton stowed all around.

A JUROR: Were there any rafters between the sheds?

Mr. CLEVELAND: No; no connection between the sheds.

The COURT: You mean rafters overhead?

The JUROR: No, I mean underneath.

The COURT: You mean stringers—cross-pieces? There were.

The dock planks were not put down in some places. Of course, the piles and stringers and cross-pieces were all there, but they had

not planked them. The frame of the dock was there but not the decking.

By Mr. CLEVELAND:

Q. All around that space, how high was that cotton stowed, do you know?

A. Like the balance, just as high, wherever we could put it.

Q. Tell me how much room there was on that dock to stow more cotton on November 12th?

A. Well, there was mighty little room because we had to hunt for room whenever we wanted to put cotton there—make room.

Q. Did you at any time prior, to November 12th, repile any cotton for the purpose of having or making more space?

A. Yes, sir. Some cotton was stowed loose, a little, and we would stow it up tighter to make room for some more.

Q. Were the different marks of the cotton kept together?

A. Well, whenever we would get a mixed car we would—suppose the car, we will say, had fifty bales, and if there were three different marks, we would make three different piles, put it together
120 and tag them. Fifty bales generally come in a car—some less and some more—generally fifty, though.

Q. Was the condition of the wharf such, during the two or three days prior to November 12, 1894, that you could stow the different lots that came in the different cars at one place?

A. At that time we had it separate. I have seen it that we had to separate a lot and put it in different places; not room enough to stow the lot in one place.

Q. Was the cotton stowed on the land side or the woods side of the shed, as you call it, as it was toward the river, or in a different way?

A. Well, that was supposed to be kept clear, but we would always leave a space, about four feet anyhow, to leave the trucks pass up. About four feet between the cotton stowed on the woods side of the shed and the edge of the platform—the edge of the dock. Cotton was piled up at the lower end of No. 1 shed just as the other was; same way. The office was at the far end of No. 1 shed, down—it was at the far end of No. 1, toward the elevator. I had nothing to do with the office; mine was all outside work. Mr. Wilkinson had charge of the dock; general charge.

Q. Did you notice how he performed his duties?

A. Well, I had nothing much to do with him, only followed Mr. Sykes' orders; but I hardly ever seen him. He was a very rough man. I know what his habits were, as to drinking. I know he drank there some. I have seen him under the influence of liquor many a time during the day. I had no charge whatever of the fire apparatus. I had nothing to do with delivering cotton to ships. On November 12th, I think there were two ships there, one loading cotton-seed meal and the other cotton-cake meal, or whatever you call it. I couldn't say whether they were loading cotton or not. I had no charge of loading either of these vessels; had nothing to do with them.

Q. Did the track on the woods side of the shed extend beyond the end of No. 2 shed?

121 A. I think it landed about a square out further. I don't know of any cotton being covered at all at that time. Cars were generally brought alongside of the platform in the rear of the shed, on the wood side of the shed by the engine, that went up the whole length of the shed. That is the way in which the cars were run on the track in front of the shed, between the shed and the river. I think Mr. Sykes was supposed to be foreman.

Q. What time did you generally return to the city?

A. Well, some evenings I would leave there at half past five and others at six. Mr. Sykes sometimes came over with me, very often we would take the same car. I came right away from Westwego after my business was through; as soon as my work was done I would give in whatever bill I had and leave.

Q. Did you at any time ever notice how the cotton was piled around any of the hydrants?

A. Well, it was piled all around, about nine tiers high. The cotton was piled higher than the hydrants. At that time I don't think we averaged 300 bales that were headed. Those bales that were headed, I think there were a few placed at the far end of No. 2, and a few in between some isles that I know of. I mean gangways. I left the place on November 12th at the usual hour. I suppose it was about a quarter to six when I got to the ferry; half past five, something like that. Generally we left about half past five or a quarter to six, and the ferry-boat would wait for the crowd when the men would knock off.

Q. Where, in relation to the gangways, were the posts at which the hydrants were, do you recollect?

A. The hydrants were situated in the centre of the shed. Those hydrants were supposed to be left in a gangway; some were and others were not. I couldn't say whether all the check clerks were working on November 12th who had been working on November 10th, Saturday, I don't remember. I don't think Trainor

122 was at work on November 12th, as far as I can recollect; I am not positive though. The hose that was near these hydrants was coiled on a little platform on the posts. Coiled on a little platform which was around the post; the platform was, I suppose, six feet above the floor of the dock. Cotton was stowed higher than the platform. The platform was higher than the top of the hydrant.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

I worked up to my usual time that evening. I don't recollect exactly on which part of the dock I was working. I was working about that wharf all day checking cotton; worked up to evening, generally about the wharf. A check clerk's place for checking cotton would be over towards the land side or the woods side of the wharf, where the cotton came out of the cars.

Q. And would his duties call him to other parts of the wharf to any extent?

A. Like in case a car would be at one end, and he got a bill for that car, then he would have to go up towards his car. He would go up to the car, from one to the other.

Q. That is, if I understand you, in doing this work he would have more than one bill at a time; have the bills for a number of cars?

A. Well, no, sir; we were supposed to get one bill and no more, and finish that, the bills for that particular car; finish that and then get a bill for another car, and our new location would depend upon where the location of our car was. And that would take us up on the woods side of the wharf to the new car. The laborers would unload it and we would check the cotton as it came out. I think I left there about the usual time that evening.

Q. And the other check clerks who were working there that day worked up to the usual time, as far as you remember?

A. Well, I am not positive if all was working: I know some.

123 Q. But those that were working that day, as far as you remember, worked as you did, up to about five o'clock or half past, and then quit?

A. About half past five or six we generally leave. I first heard of this fire when I was home eating supper. I heard there was a fire and looked up and seen the reflection. I didn't know whether it was at Westwego or where it was, and I took the St. Charles Street car. I suppose it took me about half an hour altogether to reach home from the time I left Westwego. At that time I was living on Laurel and Jena. That is about a mile and a half I should say from the Westwego ferry on the east side. The river is about half a mile across there. I went to the fire, I took the Napoleon Avenue street cars. I didn't know where the fire was, and rode out to St. Charles and had to walk from St. Charles to the river, and it took a little while to get there, that must be eight or ten squares. I don't know exactly what time I got to the river, I know it was pretty well gone down when I got there. It must have been eight or after when I got to the river. There was nothing there to see when I got there. It was pretty nearly all burned down. It was in full blaze.

Plaintiffs' counsel reads from the deposition, as follows:

Redirect examination by Mr. CLEVELAND:

Q. What took you, in the course of your duties, towards the front or river side of the shed?

A. Well, if I would have a space there I would bring it out there: the only thing that would bring me out there.

Q. What room was there anywhere on the wharf at the close of the day of November 12th for more cotton?

A. Well, mighty little room at that time that I know of. If there was any I didn't know it; mighty crowded.

124 JOHN C. TRAINOR, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am a conductor for the New Orleans Traction Company. In November, 1894, I was working for the Texas and Pacific Railway Company as check clerk.

I don't remember exactly how long I had been working for the Texas and Pacific Company prior to November 12, 1894. I think, I went to work there in September, but I won't be sure, September of that season.

Q. Will you state your age, please, Mr. Trainor?

A. I am 32 years old.

Q. What were your duties as check clerk for the Texas and Pacific Railway Company?

A. Well, we had a gang of men working under us, and our duties were to unload cotton out of cars and store it in the sheds. We never kept any books. We had a skeleton bill they handed us from the office. We unloaded the cars on the bill of lading giving the number of the car and the number of bales of cotton we had to unload and store away. During the month of November, 1894, I did not live at Westwego. I lived in New Orleans. I had to be over at Westwego at 7 o'clock. I would stay, ordinarily, until five in the evening. My whole duties as check clerk were seeing that the cars were unloaded and the cotton stored in the sheds and tagged. As the cars were unloaded by the workmen I had in my hands a paper with the mark of the cotton and what its destination was. I got those papers, from day to day, from the office over at Westwego. The office was near the edge of No. 1 shed; that is, the downtown shed—the lower shed; near the lower end of the lower shed.

Q. Will you describe generally, if you can, the dock at Westwego as it existed on November 12th, 1894—the structure?

125 A. It consisted of two sheds built on piling, and there was a space between the two sheds, which were known as No. 1 and No. 2 shed. The one down the river was No. 1; the one nearest the elevator was No. 1. The one furthest away was No. 2. I never measured these sheds; neither their length, width nor height. They were not enclosed on any side. Along the rear of the sheds—that is, on the line of the sheds—there was a track. In front of the sheds, between the sheds and the river, there was a track. I don't remember whether there was one or two tracks there.

Q. Did you have anything to do with unloading cars that were on the track between the front of the shed and the river?

A. Frequently we had to unload oil cake, usually from the front end. Rarely ever any cotton from that end. On November 12th I was not working. I was there on the 11th; on that day I was checking cars, my usual duty.

Q. Now will you describe to me the condition of those sheds on November 11, 1894?

A. Well, they were piled with cotton, each shed piled up about

eight tiers high; as high as we could get them up; usually about eight tiers high. We started from the extreme edge of the shed and went up and went higher; otherwise there wouldn't be enough space. The sheds were pretty well blocked; that's why I wasn't working on the 12th; didn't have any room for the cotton. Didn't have any more room. There were no gangways lengthwise of the sheds and parallel with the river. There were gangways across the sheds. I don't remember how many piles of cotton there were between these gangways on the average. I don't recollect how far apart the gangways were. I think there were about four gangways in each shed. They were about 3½ feet wide on the average. Could truck a bale of cotton through by placing it lengthwise on the truck.

Q. But sideways of the truck was there room enough to carry it through any of the gangways?

A. There may have been one gangway that usually was
126 wide enough, but sometimes that was blocked. The roof of the shed had considerable pitch.

Q. How far did the cotton extend beyond the edge of the shed or the line of the roof of the shed and the railway track in front of the shed?

A. We had instructions to pile the cotton right up to the edge, but not extend over. Sometimes it extended over the edge.

Q. Do you recollect any of the circumstances of November 11th, of being there at all? What particular thing were you doing on that day?

A. Engaged in the usual duties of checking cotton out and storing it away.

The gangways that I have stated ran across the shed were usually straight. Sometimes the cotton might happen to fall off and block them a little. I don't remember how many lengths of cotton there were between any of the gangways. The posts in the shed were numbered. These numbers were placed on the outside of the post. On every post there was a number. Mr. Wilkinson was in charge of the dock; that is, superintendent. I don't recollect what his first name was. He was in charge during the whole time that I was there. He employed me. He was the superintendent at the time of the fire. He was supposed to have charge of the men and the wharf; we were to work under his direction. I did work under his direction. The man next after Wilkinson was Miller. C. G., I believe, the agent. Wilkinson had several men who worked under him while I was over there. One was named Sykes, one named Coffee, and a man by the name of Ballee Rubia. There was a man by the name of Figures there. He was the chief clerk. These men I speak of were at different times what they called "walking bosses," supposed to have charge of us.

Q. Did you notice how Wilkinson attended to his duties?

A. Well, he was all right in the first part of the day, but in the latter part he wasn't so good. Used to booze a little too much. I couldn't say where he boozed; he had a hammock on the
127 dock that was swung near the office in the rear shed. I have seen him in it during working hours. I don't remember how

often I saw him there during working hours. I saw him a good many times, but I don't remember the exact number.

Q. How early in the day did Wilkinson begin to booze, on the average?

A. Well, about 11 o'clock he was pretty well loaded—I mean by that that he drank heavily.

Q. Did Wilkinson give you at any time any orders?

A. Yes, sir; once or twice, I believe, while I was there.

Q. After 11 o'clock in the day, when you say he was pretty well loaded, did you see him about there, attending to his duties?

A. He would walk around sometimes, making a little fuss; that's about all. By making a little fuss I mean, hello a little—hello to the negroes over there to move around lively. I received my orders directly from the walking bosses usually. These different men whom I have mentioned. In November, 1894, Sykes was the walking boss. I don't recollect his first name; I don't know where he is now; I don't know where Mr. Wilkinson is. I did not continue in the employment of the Texas and Pacific Railway Company after the fire. Immediately after the fire I went to work for Boylan's agency—detective agency.

Q. Do you know what means for extinguishing fire there were on the dock on November 12, 1894?

A. I couldn't say on the 12th, but I know what they usually had there.

Q. Well, describe what you saw there prior to the 12th of November?

A. In each shed there was a big hose, and at each one of the posts there was a barrel of water, and besides that they had fire-buckets with some fluid in them to extinguish fires. There was nothing else; there was a line of hose. I don't know where that line of hose
128 led to. There were plugs on the dock—water plugs. I don't remember how many there were in each shed. I had no charge whatever of the fire apparatus. I don't know the length of any of the lines of hose that were on the dock at the time of the fire; I don't know the size of the pipes to which the hose led. The hose was usually kept coiled upon a shelf. That shelf was near a post in the shed.

Q. Did you at any time notice any cotton near any of these lines or coils of hose?

A. I have noticed cotton there, that would fall over and block it sometimes; they usually move them, though. I never saw that hose tried. There was never any drill of the men on the dock that I saw; drilling of the men to show them how to handle the hose. I don't recollect in what part of the shed those lengths of hose were. I don't remember whether they were in the centre of the shed or in the part of the shed nearest the river, or in the part further away from the river. I had been in the employment of Colonel Boylan before I went into the employment of the Texas and Pacific Railway Company. I worked for him over a year, I know. I was a shipping clerk in the employ of the Texas and Pacific railway part of the time I worked there. I don't remember exactly how long I

was a shipping clerk, but not very long. Then I became a check clerk. As shipping clerk I had to—whenever there was cotton to be delivered to a vessel they sent up from the main office the marks, the number of bales and the ship it was to be delivered to so that we could get it out of the shed, have it trucked on the wharf and get a receipt for them. By sent up from the main office I mean from the New Orleans office, in the city of New Orleans.

Q. In November, 1894, was cotton stowed in these sheds according to its mark, or how was it stowed?

A. Well, usually, if you have a load of cotton or a car of cotton, 50 bales, say, it was trucked out and placed in the shed and tagged; the number of bales and the mark. In most cases, where there was not a mistake, that was done. Those were the instructions, and they were usually followed. There was a place in those sheds for
129 cotton destined for Liverpool, as distinguished from cotton destined for Bremen. I couldn't say whether in November, 1894, the cotton that was destined for Liverpool was all in the Liverpool part of the shed. I know it happened sometimes, when one shed was crowded they used a part of another shed; for instance, the Bremen cotton used the Liverpool shed to put the cotton in there at the time when it was crowded.

JOHN ELLIS, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I live in New Orleans and am thirty-two years old. I am a longshoreman; that is, the majority of times. At present no. At present I am pulling ice for the Southern Ice Company. I have been working as a longshoreman nine or ten years. In 1894 I was working on the levee as a longshoreman, discharging and loading cargo. I was working then for Mr. Mahoney, Mr. Kent and a man by the name of Taylor. I remember the fire at Westwego. The day of the fire I was working at Westwego on the steamship Malabar as longshoreman under Mr. Kent. I was working in the hold at No. 3 hatch. Oil cake was being taken in at No. 3 hatch. I had occasion to go on deck that day. I came up on the deck and was sitting and talking to the mate of the ship. That must have been after eleven; between eleven and twelve. We knocked off for some cause or other, I disremember which, and I came up on deck and talked to the mate until we went to lunch at twelve o'clock. There was a railroad track on the wharf between the shed and the river. There was one that I know of. I could see that track when I was on the deck of the Malabar, talking to the mate, from where I was sitting I could see the track and the wharf.

Q. Do you recall any incident or fact that happened there on that wharf on the day of the fire?

130 A. The only thing I know was a locomotive on the wharf; on the track between the shed and the river; the track that I just spoke of. I remember seeing that locomotive. It must have

been between eleven and twelve o'clock, while I was sitting on the deck, sitting talking with the mate. I am positive of that. I saw that locomotive, just a little past No. 3 hatch. I went to lunch that day over to Gassenberger's bar-room.

Q. What was the engine on that day doing on the track?

A. Set some cars up there. I have seen an engine on that track before. I could not fix no particular time, but I had occasion to be over there a nu nber of times, and generally used to see them. I have no interest in this litigation, one way or the other.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

I am not working for Mr. Lincoln, now. I had been working for him several days on the Malabar. I was working down in the hold. I had knocked off, for some cause, that day.

Q. Didn't you know you had run out of oil cake?

A. Well, that I couldn't say. The foreman generally knocks us off, but he never tells us what we are knocked off for. The only time we know is when the fall stops, and we know we are knocked off, but we don't know what it is for. Sometimes there is something on the wharf, and they will stop us for half an hour or so.

Q. You stopped that day about 11 o'clock, didn't you?

A. Must have been in the neighborhood of 11 o'clock, I think, because we lost one-half an hour. I came back again after I had had lunch.

Q. How soon after you came on deck did you go to Gassenberger's?

131 A. I waited until they sang out we could go for dinner. That was 12 o'clock. I didn't leave there until 12 o'clock. I didn't pay any attention, when I left, whether the engine was there or not. Going to lunch I came down the ladder, down on to the wharf at the lower end of the cotton wharf. I don't know whether I noticed the engine or not. I didn't notice the engine when I went to dinner. I went to dinner about 12 o'clock. Some of the other men went to dinner at that time and some didn't. Some bring their lunch with them. Some of the others were going to dinner. I don't remember who. I went down to the end of the conveyor, the elevator conveyor, and across. I don't know whether the engine was there when I went to dinner. It was about half an hour before that that I had seen the engine there. The engine came in about half an hour before that; she came in, got the cars and pushed them up, then went off again. I didn't see her steaming there. I got back from dinner about a quarter to one. I came right to the wharf so that I would be ready to go to work when the clock struck. I worked on that day until about 5.30, then we quit work; but there was a couple of men kept there to put the trucks aboard the ship, and I was one of them that was kept there until 6 o'clock. I was there until 6 o'clock. Then we finished, put on our clothes, went to the ferry-boat and crossed the river. I first heard that there was a fire at Westwego when I got out of my car at the house. I seen

them standing in the street. I can't say just what time that was. I live a good ways from the ferry where I crossed. Two miles, it might be; might be two miles and a half. I was eating my supper and heard Westwego was on fire, and a fellow came in and said let her burn. That's the first I heard of it. I didn't see no fire while I was there, or while I was on the ferry.

132 JOHN NIE, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I live in New Orleans. I am thirty-three years old. I am a laborer; longshoreman. I was a longshoreman in 1894. In 1893 and 1894 I was working with the firm of Chas. K. Lincoln & Co. I had occasion to go to Westwego in 1894 very often. I was over there the day the fire occurred, but the exact date I don't know. I was putting oil cake into the steamship Malabar that day. That was one of Mr. Lincoln's boats. Ellis, Stych and two of the Reinhards, John and William Reinhard, and lots more men were there with me, but I don't remember all of their names, now. Mr. Lincoln and Mr. Kent were there that day. Mr. Kent was the foreman over there on the day of the fire. I was what they call a "derricksman," a man that takes the fall in and out to haul the cargo into the ship. I stood at No. 3 hatch. I was by the upper end of the wharf. We had a platform built from the hatch to the wharf; that is, we had planks or a stage of some kind, running in and out, and I would take the slack of the rope and put it on the fall of the ship, and take the fall back for another load. I was on the deck of the ship and on the wharf, back and forth. I didn't go into the hold of the ship. I was continually in sight of the wharf. The freight on the wharf at that time was principally cotton. There was cotton piled in the sheds, and all around. The place was literally blocked with cotton. There is a railroad track running along the wharf. I guess it must be about ten feet or so—ten or fifteen feet—from the edge of the wharf where the ship lies. I am speaking now of what existed on that wharf the day of the fire. I don't remember how many ships were loading there on that day. There was another ship there, but I didn't notice enough to be positive. I couldn't say how many were
133 there. The other ship was above the Malabar. I can't say how many cotton berths there are there. I think there were about four lengths of ship, three or four lengths above the elevator. Of course, there is a length at the elevator. About three or four berths outside of the berth at the elevator. There is a berth down below, where there is nothing but grain handled. These ships are all sizes; some 260, 300, 310, 350, 400, 460 feet; and, of course, if two ships of four hundred and sixty feet long come there, of course there wouldn't be room for four like them.

Q. Was any particular incident that happened on that day fixed in your mind by the occurrence of that fire?

A. Yes, about noontime. I don't know as it was exactly twelve,

but anyway, somewhere near twelve o'clock, a locomotive came on the wharf, and she passed up by No. 3 hatch. About how far up she did go, I don't know, but she passed the hatch where I was working; she passed right in front of the hatch. The distance may be ten feet, or it may be fifteen, or twelve, something like that. I don't know exactly the measurements, but I couldn't help noticing it, because we stopped work when the locomotive came up. The trucks couldn't get in. I went off to dinner, and when I came back she had gone. How long she stayed, I don't know. I am positive that that engine was there that day. She had some cars with her, and she passed on by the No. 3 hatch. I am sure of that. The engine itself passed there.

Q. How near where that engine passed was there cotton piled on the wharf?

A. Well, there was cotton piled all around.

Q. What would you say was the closest distance to that engine, or how close to that engine?

A. About fifteen feet; something like that. It was cotton headed up on the wharf. I saw that engine on the wharf before; saw it coming there other times. They came to pull cars in, and they often came in there. I could not call the day. I will say, though,
131 that it has been on there before this day; on the wharf; on the front of the dock. The Malabar that day was lying at the first berth above the grain wharf. There couldn't be any other ship below the Malabar unless she was loading grain. There was no boat taking cargo below the Malabar, that I can remember. I have no interest in this litigation, one way or the other.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

We were loading oil cake and different cargoes on the Malabar. We put on oil cake, meal, staves and one thing and another. That day we were loading oil cake and meal, I think. The oil cake was unloaded on the open part of the wharf, outside of the sheds; some of it was got from a point between this railroad track and the front of the wharf, and some of it came from the other side of the track.

Q. Then there was some space between the track and the cotton which was piled in the shed, wasn't there?

A. Well, you have got a little opening in it. The oil cake was piled in that opening.

Q. Was there any space between the track and the cotton on the shed side of the wharf?

A. No. There was cotton piled in the shed, and headed on the outside of the wharf, between the track and the shed. I don't know how many days the Malabar had been there. I guess she had been there a couple of days. I don't say we had been loading oil cake all the time, but it was one or the other. We were putting something in there. I was what they call "derricksman." All ships have derricks, and they had a derrick on this ship. I was not running the derrick. I was running the rope to hoist the cargo in with. There

is a rope that runs from the derrick down to the hold, up and onto the wharf, and I run with that rope, attach it to the cargo down on the wharf, and then the man who is running the winch, he
135 had it hoisted up. The derrick is a stick of wood that sticks up; the rope of the derrick hauls the freight in from the wharf which was put in the hold of the ship. The winch is the steam hoist machine that works this rope, and my duties was to carry this here rope attached to this winch from the hatch to the wharf, and to fasten it to a load and go back into the ship. The man in the hold unhooked it and I carried it out to the wharf again, for another load. I was on the deck and wharf all the time. We got some of this oil cake off the wharf. In fact, we got it all off the wharf, because the railroad men threw it out of the cars. I was working at No. 3 hatch. The first hatch, counting from the forward end of the ship, is No. 1, the second is No. 2, and the third No. 3 hatch, right after the engine-room; that is, in this particular ship. I was toward the stern. It was not the last hatch. There was another hatch after that; No. 4 hatch.

Q. Now, this steamship Malabar, was she lying right close alongside of the wharf, or was she lying diagonally with her nose to the wharf?

A. Her bow was a little closer in than the stern, but there wasn't a great deal of difference. She was lying diagonally from the wharf, down toward the grain elevator. I don't remember about what stage of water there was.

Q. Don't remember having any trouble over there with ships, do you?

A. We had trouble; yes, sir. I had to carry thirty-foot wharf planks about a mile and a half. We got them away on the upper end of the shed; on the outside. You see, on the upper end of the wharf is a track on the wharf. There is one behind the wharf too, and we got these planks off a flat car at the upper end of the shed. That is, the opposite end from which we were working. We had to go up the wharf. Then we had to go back and get on this here track and get these planks off this gondola car. I don't remember how near finished loading the ship was. I remember that on this
136 particular day an engine pushed some cars in there. I don't remember how many cars; I didn't keep any account of them. There was oil cake in some of the cars. All our oil cake came out of cars. I don't remember whether, out of those cars that were pushed in, we got any more oil cake for loading. I know we got cake in cars that day, but if it was that lot that was on the wharf about that time, I don't know. I was working only at hatch No. 3. There were a number of men in the forward part of the ship, but I don't know what they were putting in. I don't remember how many cars were pushed in. That was not the only time an engine came in while I was working there. I have seen them often. She had been there the day before. Came in with cars the day before. This switch on the front of the wharf ran on down past the grain elevator. It goes on down toward the levee, and connects with other switches. It is where they put cars in on the wharf for unloading.

The cotton that was nearest to this engine was headed up. There was some cotton headed between the ship and the track, and some headed on the other side. The nearest to the engine was about fifteen feet, either way. They left a gangway so box cars can go through the cotton, and, of course, space enough for the men to walk in between the cars and the cotton that was headed. There was space enough to walk between the cotton and the cars. There was space enough to unload oil cake and meal and freight there.

Q. So that about that distance from the engine to the cotton——

A. You don't seem to understand what I am talking about.

Q. I am trying to get you to explain what you are talking about.

A. There is a car on the wharf. They got a whole pile of cotton in one place along here, put up against the track, and then alongside of that they can berth the steamer, and still that cotton be alongside the track.

Q. I understand that, but I am asking you about the distance this cotton was from the engine. I understood you to say it was
137 about fifteen feet. Am I right about that?

A. Between ten and fifteen; might be ten, might be twelve. This engine came on there about twelve o'clock. Pushed a lot of cars up and then stopped there. I went to dinner at twelve o'clock; I guess it may have been half past twelve or a quarter to one, something like that, when I got back after dinner; we got back in time to go to work for one o'clock. We worked some that afternoon. I don't remember what time it was they got the cars in; but we generally go to work at one o'clock and work right along to six. You might work half an hour and then stop half an hour, and go to work again for another half hour and stop again, but you will still have to stay there until six o'clock or half past five in the evening, whether you work or not. I staid there until half past five or six o'clock that evening. I don't remember whether it was five or half past five or six. I know I stayed there until late in the evening, until after five. Then I went home. I was living in New Orleans. I never heard about that fire until after getting home. I went downtown because I had some business down that way; and I didn't hear anything about it until I got home again that night. That may have been about ten o'clock that night when I got back from down-town, and they told me Westwego was burning, and I saw the reflection. That is the first I heard of any trouble up there with fire. I couldn't say about how many cars I noticed attached to that engine. I simply noticed the cars moving past there with the engine. It was an every-day occurrence. I couldn't say whether it was ten or fifteen cars that were being pushed up; I don't know whether it was eight or ten cars. There may have been that many; there may have been more. I couldn't say, for I didn't take notice as to how many there were. I don't know whether they reached up to the upper end of the wharf or not; I don't know how far they reached up. After the engine came up, I went off to dinner
138 and left her there. What she done while I was gone over to dinner I don't know.

Q. Before you left for dinner, do you know whether she had come

upon the wharf to take some cars out, and came back with another string of cars; do you remember anything about that?

A. I don't remember. I know that just previous to dinner time she came up on the wharf and stopped at hatch No. 3, went up the wharf further; and during that time it came twelve o'clock, and I went off to dinner. When I went to dinner she was pulling somewhere up on the wharf; she was moving up there. The Malabar was lying like all ships, with the bow upstream.

JOHN STYTCH, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I live in New Orleans; I work on the levee as "longshoreman;" I have been in that business ten years; I am forty-four years old. I have worked under Charles K. Lincoln. He is a stevedore. In 1894, at the time of the fire at Westwego, I was working with Mr. George Kent. I was working at Westwego on the day of the fire. I was tending the fall at the winch, fixing the rope that leads from the derrick that takes a turn around, and take it in. I was on the deck of the steamship Malabar, at No. 3 hatch. Oil cake was being loaded on that vessel at that time at that hatch. From my position on the deck I could see the wharf; I could see it plain. Cotton and oil cake was mostly on the wharf at that time. At our end of the wharf was cotton, except the oil cake we were taking in. I couldn't tell how much cotton was there. The whole place was full of cotton. It was all blockaded up with cotton. I forget how many railroad tracks there were on the wharf. I think there was a switch
139 up somewhere above, where there were some planks laying; some kind of a switch, I think, going off there on the river side of the dock. There was one track between the cotton shed and the river. That's all I saw, to the best of my memory. I remember when the fire occurred.

Q. Do you remember any particular incident that happened that day at Westwego before the fire?

A. No, not that I know of, except I seen the engine on the wharf; seen the locomotive and cars. I saw them right abreast of the No. 3 hatch, where I was working. When I saw the engine she was right abreast of No. 3 hatch. I am positive about that. I am positive that that was on the day of the fire. It must have been somewhere between eleven and twelve o'clock; somewhere in that neighborhood. I don't know how long that engine stayed on that wharf. She was a good while there. I couldn't exactly say, because I had to attend to my work; I had to mind my work. I know it was a good while, anyhow. I couldn't say exactly how long she was up there, but she was on the wharf somewhere between eleven and twelve o'clock, right abreast of No. 3 hatch. I have no interest in this litigation on one side or the other.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

I was running the falls on the winch; take a turn of the rope around the barrel of the winch taking in cargo. That kept me on the deck of the ship. This winch is right by No. 3 hatch; right behind it. So as to be out of the way of the cargo coming into the hatch. My work at this hatch kept me pretty busy there while men were taking in the cargo. We were busy taking in the cargo on the Malabar that afternoon. We took in all the oil cake we had, and knocked off about half past eleven, waiting for the cars to come in.

Eleven o'clock, I think it was, we knocked off. Then some more oil cake came in; came in in cars. We were knocked off before this engine came in there.

Q. And these cars were to bring the oil cake in for you to continue to load?

A. No, we were working when the engine came on the wharf. We didn't have no oil cake, only a few loads, and had to wait until they came in. We had about four or five loads and we had to wait for the other. Had to wait for some more oil cake. We stopped working, then, until they would unload some more cars. They were unloading it for us to put on the ship, and we were waiting. This engine, I understood, was bringing in this oil cake. There was a good many cars with her; I don't know exactly how many there was. I couldn't say for sure. I couldn't say how far up on the wharf they reached. The engine was right abreast of No. 3 hatch. The cars were ahead of the locomotive. Up the wharf. The engine was headed up the wharf, and was pushing the cars up. I couldn't say how long the engine stayed there. We worked up to, I think, eleven or half past eleven; and we stopped, I think, it was about half past eleven. I went to dinner about twenty minutes to twelve; I went over and got some lunch. The engine was there when I got back; I only got a sandwich and came right back. When I got back it must have been five or ten minutes to twelve. I couldn't say how long she stayed; I went away from there. She was standing still there. I couldn't say whether she was standing still all the time after she brought the cars in. I went away up to the top end of the shed. I guess I was up there about ten minutes. I didn't see her when I got back. The cars were there. The men were unloading the oil cake. They were not unloading the oil cake right at No. 3 hatch, a little above it; about twenty feet, I think it was, from the hatch. I remember testifying in a suit in New Orleans, in the Allgeyer case.

Q. Do you remember this testimony that you gave in that case:

—. "How many cars did she have with her? A. I don't know, I didn't count them; I can't say exactly. There were a great many cars. The cars reached from the after part of the ship to about the bow of her.

"Q. There were very many? A. Yes, sir; very many cars."

Q. You remember that testimony of yours on that trial?

A. Well, it might have reached that far; I couldn't say that.

Q. I ask you do you remember testifying to that effect on that trial, those questions and those answers.

A. I forget now. I know there was a great many cars, but how many, I don't know exactly.

Q. Did you so testify on that trial?

A. Yes, sir; that there were cars?

Q. Do you remember this testimony of yours on that trial?

"Q. What time of day was it when you saw that engine? A. It must have been somewhere around eleven or twelve o'clock. I don't know particularly, but it must have been about eleven or twelve o'clock. I had no watch, but I know we knocked off for dinner."

Q. Do you remember that?

A. Yes, sir.

Q. Did you so testify?

A. Yes, sir.

Q. Do you remember this testimony:

"Q. Did you see the engine as far as it went? A. I only saw it going toward that No. 3 hatch.

"Q. Where did she stay? A. She stayed there.

"Q. Didn't she go in higher? A. No, sir; she stopped there.

"Q. Didn't she go back? A. Well, I was at dinner; I didn't see."

Q. Do you remember that testimony, and did you so testify?

A. Yes, sir.

Q. Now, you say you went to lunch?

142 A. Well, it was a sand'wich; I went over to lunch; it was only to bite a sandwich.

Q. You went there about half past eleven, you say now?

A. It may have been; maybe later.

Q. Well, your recollection is not very distinct about what occurred on that day, Mr. Stych, really?

A. Sir?

Q. Your recollection is not so distinct as to what occurred on that day?

A. Well, I don't know; I just tell the truth that I saw.

Q. I have no doubt you are teiling the truth, but your recollection is not so distinct about it. There was nothing distinguishing that day from any other day, was there, particularly?

A. Nothing I know of, except the engine and the cars; that's all I know of.

Q. Except the engine and the cars? Well, didn't they ever push any cars in there before?

A. I couldn't say. I hadn't been working there in a long time before that. I never saw them push cars in there before this day to my recollection. I wasn't working a good while until I went to work on the steamship Malabar. I was working on the Malabar all the time she was loading oil cake there. We knocked off work at six o'clock and went across on the ferry. I first heard of the fire the next morning. I heard it at Southport; I was up at Southport next day.

Q. Do you remember this testimony of yours in the Allgeyer case, here in New Orleans:

"Q. When did you leave that evening? A. We knocked off at half past five; it may have been a quarter to six when we left there.

"Q. Where did you go? A. Came right across the river on the ferry.

"Q. To Tchoupitoulas street? A. Yes, sir.

"Q. Did you go back there that evening? A. No, sir; I never went back any more. Went down in the car.

"Q. You didn't see the fire? A. No, sir; only when running across I saw the smoke, but we couldn't tell where the fire was.

143 "Q. Did you see the smoke of the fire before you reached your home? A. Yes, sir; I saw some kind of a smoke, but I didn't know what it was."

Q. Do you remember that testimony?

A. Yes, sir; I testified that way.

Q. Now, where was it you saw this smoke?

A. I was going down in the Tchoupitoulas Street car, and saw the smoke in that direction; that is what I referred to.

JOHN REINHARD, called as a witness for plaintiffs, testified as follows (this testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I live in New Orleans and am a longshoreman; a laborer. I am forty-three years old. I have been engaged as a longshoreman about twelve years. I work for anybody that gives me a job. I work for Elder, Dempster & Company, one time; another time, the West India Steamship Co.; another time, for Mr. Lincoln, stevedore; and I work for Mr. Kent. He is the foreman, and Mahoney, who has given me a job of work; shovel grain, or do any work like that. In 1894, at the time of the fire at Westwego, I was employed by Mr. Kent. He is the foreman for Mr. Lincoln. I was working in the hold of the Malabar. She was lying at the cotton wharf, right above the grain elevator; in the middle of the wharf at Westwego. She was at the lower end of the cotton wharf. I was working in the hold at number 3 hatch. I had occasion to be on the wharf that day at dinner time. I seen a locomotive on the wharf, right abreast of No. 3 hatch. The track is between the cotton shed and the river. That is the only track that was on the wharf at that time.

Q. What time of day was it that you saw the engine on that wharf?

A. I came out of the hold about quarter to twelve. The 144 men knock off at half past eleven, or something like that; we had a little extra work to do, because we were the storers; storing oil cake. I came out about quarter to twelve. When I came out I seen a locomotive on the wharf. I am positive I saw it there on that day. I cannot tell how long the engine stayed there.

I went over and got dinner, and I did not come back there until nearly ten minutes to one. I have no interest in this litigation.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

From my recollection I had been working up there on the Malabar, I think, about three days, if I am not mistaken: it might be more. Loading oil cake all the time. I was in the hold up to dinner time, around a quarter to twelve, then I would knock off and go to dinner.

Q. And do you remember stopping that day on account of there not being oil cake to load in this hatch?

A. I could not answer that question at all; I know the hatch was k ocked off.

Q. Well, do you remember stopping early that day for any cause?

A. Well, now, I could not tell you that, sir. I don't remember that, at all; that is not in my recollection. All I know, it was a quarter to twelve when I came out of the hold to go and get dinner. And the engine was standing on the wharf, right at the cotton shed. She wasn't puffing at the time I went past, because I went ahead of her. She wasn't moving at the time. I don't know how many cars were behind her: I took no notice; I went right over to the bar-room and got my dinner.

Q. Well, when you passed that engine, did you notice how many cars there were?

A. I had to go around this way; the engine was standing here, and the cars were in front, and the engine was towards down-
145 town. I had to pass that engine, going towards my dinner place. I had to go downtown on that wharf to get dinner. That is, I went down towards the grain elevator, in that direction, but I didn't go to the grain elevator, and then went over the wharf to the bar-room to get my lunch. I remember passing this engine; I had never passed it before going over that wharf, as I know of. I seen engines on the wharf over there; you know I have been working over there for years. At other times I saw an engine on the wharf pushing cars in to be unloaded on this track that was on the front of the wharf. At about ten minutes to one I was coming back. I didn't notice whether there was an engine there; I could not tell whether she was there when I got back or not. There was cars on the track at the upper end; the middle of the ship. About the middle of the ship; about the centre—very near on the No. 3 hatch. This No. 3 hatch was right even with the cotton shed—the lower end of the cotton shed downtown. No. 3 hatch was right even with the lower end of the shed—outside here was all piled up with cotton. There was no shed there at all, as this cotton was piled upon the outside. The shed did not reach out to the outer edge. This No. 3 hatch was right even with the cotton wharf—right even with the lower end of the cotton wharf.

Q. And the engine was right at the lower end of the cotton wharf?

A. No, sir; not that way. I beg pardon. You know this cotton wharf runs down all the way down, too—runs the whole distance. It is the cotton wharf, all the way down. There is cotton all piled up here, and an opening where there is water.

Q. I want to know how far from the lower end of the cotton wharf No. 3 hatch was?

A. It was right even with the cotton wharf—even with the lower end of the shed on the wharf. The wharf runs down to No. 4 hatch, and further than No. 4 hatch. The shed, where the cotton was piled, was even with No. 3 hatch. I worked that afternoon.

146 Q. Do you know whether you took any oil cake that came off the cars that were there?

A. Must have taken oil cake off of the cars, because that is the way we get the oil cake—get it from the cars. There was a little more oil cake that was on there, but we knocked off and gave the men a chance to wash down in the hold at one o'clock. We finished that afternoon. We took in a considerable amount that afternoon in No. 3 hatch. To my recollection, we quit work that afternoon at half past five o'clock—somewheres around there. I don't remember what time I left the wharf that afternoon—between half past five and six, as far as my recollection goes, that is what time it was. I didn't see anything of any fire while I were there. I never heard nothing of any fire until the next morning.

WILLIAM REINHARD, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

In November, 1894, I was working under Mr. Kent in loading the Malabar at Westwego. First I was working on the Malabar at Southport, putting in cake and meal. After that, about eleven o'clock, I came over to Westwego, and the Harrison boat was in the road and we had no room to work there, so we had to wait until the next morning, and came over the next morning and started to rig her up. At Westwego we loaded the Malabar with cake. We got that cake on the wharf. It was not unloaded from the cars. We first took the cake into the vessel that was unloaded on the dock. First we rigged her up. Mr. Kent told us to go and hunt some planks; the ship was off the wharf a little piece, about 20 or 22 feet, and so we had to go and get long planks, and when he asked us to go and hunt up planks we couldn't find a plank long enough to reach over from the wharf to the ship, so we had to go and look around for some other planks to rig up, and the mate told me there was some planks up at

147 the upper end of the wharf; so we went up there to get the planks; they were on a car. We took one of them and managed to get it through an alley on the upper end. We tried that alley up there first, and when we got out there there was a lot

of cotton piled there, and so we had to shove the plank over and through there; and when we got down near our ship the whole place was piled so close that the four men could not get through, so we had to shove it over the oil cake and managed to get it over that way; took it out right in the middle where our ship was lying. There was an open space there between the sheds that was right opposite our number 3 hatch, where we came out through that place. That was the biggest gangway; I think there was three altogether, one in the centre, one at the upper end and one at this end; and we managed to get the plank through there. The plank was pretty heavy, so we asked Mr. Kent to give us some more men. After we got it around, got the plank around, everything was piled so close there that we had to shove it over, had to push it in the gangway. The cotton was piled so close to the gangway.

Q. Well, now, will you describe generally the condition of those sheds as to being filled with cotton. Tell me how full they were of cotton.

A. Well, underneath the shed I think it was about seven or eight high.

Q. And how were those gangways, wide or narrow?

A. There was one gangway you couldn't get through. There was only one gangway we could get through, carrying the plank on our shoulders, and that was at the upper end, and that is the reason we preferred to take that one.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

148 These planks were pretty heavy pieces of timber, pretty heavy planks; cypress planks; about 35 feet long and about a foot wide and about an inch and a half thick. They were pretty heavy.

Q. Now, there were four of you; how did you carry them?

A. When we first carried it we had to carry it on the edge. That's the only way we could get through the gangway. Carried it on the shoulder; up towards the end, on our shoulder.

Q. Were you carrying it, two in front and two behind?

A. No, sir; four in a row; one went behind the other.

Q. One went a little behind you, on the opposite side, and the one on the same end of the plank with you, you would have your right shoulder under it and he would have his left shoulder under it?

A. No, sir; couldn't get through the gangway; wasn't wide enough.

Q. That was the upper gangway?

A. No, sir; the lower gangway. When we came out to the track to the front of the shed the car was in the way and we had to push it through. We had to push it up, over the freight. We carried the first plank through the upper gangway, in the same way, except that instead of letting it lie down flat we set it on its edge.

Q. And the difficulty you had in getting out was in the turn

opposite the Harrison steamship, not in bringing it down the wharf?

A. The Harrison boat, and getting it over the cotton which was outside of the track at that point.

Q. Then the next one you brought down on the woods side on the wharf, right next to the cake, until you got it where this gangway ran across the wharf?

A. Opposite our number 3 hatch. And we came right through there with it on our shoulders.

149 CHARLES K. LINCOLN, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in this cause):

Direct examination by Mr. CLEVELAND:

I reside in the city of New Orleans, and have resided here 32 years. I was a stevedore. I have followed that business 31 years. I was engaged in that business during November, 1894. I am somewhat familiar with the place called Westwego. I can't remember all that I was doing on the 12th day of November, 1894. I was engaged in loading a vessel, as stevedore, under the employment of Ross, Howe & Morrow. That vessel was the Malabar, lying at Westwego. I don't remember what others were there. I was at Westwego on November 12, 1894. I guess I got there somewhere between ten and eleven o'clock, but I can't remember exactly. The Malabar was loading with oil cake at the Westwego wharf. My foreman at that time was George H. Kent, and he was loading the Malabar.

Q. Will you give me a general description of the dock at Westwego as it existed on November 12, 1894—I mean the structure?

A. Well, the lower part is taken up with the conveyor to the elevator. I can't say the length of it; I wouldn't say the length of the wharf or the width, but there was room for about three ships above that, I should say. Railroad tracks in the front and rear and sheds on the wharves; two sheds.

Q. Describe, if you please, the character of these sheds or structures that were upon the dock.

A. Well, they were built on posts. It's merely a cover. Posts and a roof, that is all they consist of. I don't think they were enclosed on any side. I had occasion on my visit to Westwego on November 12, 1894, to notice the contents of those sheds. They were blocked up almost completely with cotton. The cotton in them was piled up in piles. That is, the cotton is laid down, one
150 bale on top of the other, piled right up seven or eight or nine tiers high. It's pretty hard to say how high the sheds were; perhaps 20 or 25 feet; I can't remember all this, as I never took notice particularly of the dimensions, height or anything like that.

Q. Will you describe, if you please, a little more fully how this cotton was stowed on this wharf under and about the sheds?

A. Well, as I said before, it was piled perhaps seven or eight or nine tiers high and it extended under the roof out very near the railroad track. The bottom tier of this cotton came near enough to

the railroad track that I was afraid to stand between the tier of cotton and a locomotive; one or two feet. I am speaking now of the material in front of the shed, between the shed and the river. I did not notice whether there was any gangway that ran lengthwise of the sheds. I couldn't say it ran the whole length. There were some gangways; I wouldn't say they ran the whole length of the shed, though. There were some gangways across the sheds. Perhaps some of them might have been two feet, perhaps some of them a little more; barely room for a man to go through. I know there wasn't room to run trucks through. There were not gangways between each row of bales. I couldn't say how many bales in length there were between the gangways; probably six or eight; might have been six or eight tiers of cotton and then a gangway. I can't remember all that. I saw cotton on the dock that was headed. Between the sheds and the front there was cotton headed. I did not see any cotton headed in the sheds. The cotton I saw headed was in front of the wharf. I mean between the track and the front of the wharf. In the open part of the wharf. I have already stated that the cotton came out from under the roof of the shed, came outside of the roof near the railroad track. I saw some of the cotton there outside of the line of the roof toward the railway track, in front of the sheds and near the river, that was covered with tar-
151 paulins. I know there was considerable that wasn't covered; the lot where I was wasn't covered I know.

Q. What else was under the sheds, if anything, except cotton?

A. I think I saw some oil cake under the shed in some places.

The Malabar was loading at the lower end of the dock. There were one or two other ships loading there besides the Malabar on the 12th of November, I won't be sure which, at the upper end of the wharf. I am sure of one. I had no part in the loading of these boats. My duties were confined exclusively to loading the Malabar. The other boats were taking in cotton. I didn't make any particular examination of this cotton as it was stowed there under the sheds. I was up and down the wharf considerable. My business called me there, and I was up and down there a number of times. I didn't make any estimate at all of the number of bales that were under the sheds, or either of them. I don't remember how long my ship lay there at the dock. I don't remember when she commenced to load. I suppose I was there on November 12th a couple of hours. I did not notice what was being done in the rear of the sheds. I have seen the fire apparatus. I did not take any particular notice of it on that day.

Q. What is Westwego; is there a town there?

A. Well, no, no town. The nearest house to the dock outside of the elevator is a thousand or fifteen hundred feet, I should say, from the wharf toward the upper part.

Q. How do you reach Westwego from New Orleans?

A. There is a ferry running across the upper part of the city just above Audobon park. The ferry landing is very nearly a quarter of a mile from the dock at Westwego; the elevator was situated toward the lower part of the wharf right abreast of the lower part of

the wharf in the rear. This conveyor that I spoke of extends up on the lower part of the wharf from the elevator out to the end of the wharf and then up the wharf.

152 I said that there was not room between the cotton that was in front of the sheds and the railroad track for me to stand there.

Q. How do you know that?

A. I have stood there and a locomotive came along. I did not remain there. I got on top of the cotton to let the locomotive pass me. This was right abreast of the Malabar, opposite the upper shed, I think it was where she lay. There were two sheds on this dock. I think it must have been the lower shed the Malabar lay abreast of, but I wouldn't be positive whether it was the upper or lower end where the Malabar lay abreast of.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

Q. Mr. Lincoln, you speak of a lower and upper shed. Would you designate by the one nearest the elevator which you mean by the lower shed?

A. That would be the lower shed, and the one furthest from the elevator would be the upper shed. The elevator don't form part of the wharf; just the conveyor. I couldn't say how far it is from the elevator to the wharf, but it's four or five hundred feet, I should judge, or more. The elevator stands back some distance from the levee and the wharf.

Q. And the sole connection between the elevator and the wharf are the tracks which run between the elevator and the wharf. Is that not the case? Some switches that run from there to the wharf; they run between the elevator and the wharf?

A. Yes, sir; run in between them—the tracks run between the elevator and the wharf. The conveyor of which I speak is a conveyor to carry wheat out from this elevator to the point where ships can come and receive it from the conveyor. The conveyor runs on the wharf from the elevator, crosses from the elevator and runs up the wharf. The conveyor is built from the elevator to the wharf and then up the wharf. That is my recollection of it.

153 Q. And really, then, as you remember it, it formed a part of the wharf; that is, the conveyor?

A. Yes, sir; built on the wharf; the conveyor; yes, sir; so that a vessel loading at the conveyor would be simply a little further down than a vessel loading at the lower shed. The conveyor does not run away up where the cotton was. It runs up to below where the shed is, the lower shed which I speak of. If there was a vessel loading wheat, a vessel loading cotton at the lower shed, and a vessel loading cotton at the upper shed, they would lay in a row, one behind the other; one lower down than the other. I speak of the side next to the ships, where the ships come to, as being the front of the wharf.

Q. About how wide is it from the front of the wharf to where you say the two tracks were?

A. Well, I should say twenty feet; perhaps twenty-five feet; something like that. It was planked, they are not open there; it's all solid work; all covered, but with an opening abreast of the ship. It's not roofed, not roofed at all. These tracks which I speak of as being there, were on the same level as the wharf. There were two running side by side, right parallel with each other. I should say the inside of the track nearest the sheds are ten or fifteen feet from the line of the roof of the sheds, as near as I can remember. I know of the tracks on the other side of the shed being there. I know cars were discharged there, and they were down below the level of the wharf. They were down below the level of the wharf six or seven feet, so as to make the car door level with the wharf. Maybe they were not below that much. I don't know how many tracks there were. As near as I remember, I think these sheds were 20 or 25 feet high at the centre; that is a kind of sloping shed; it wasn't a sharp pitch. I should say they were, perhaps, about 15 feet at the outer edge, as near as I can remember. It's pretty hard for me to remember all these different things. I went up there that
154 day about 10 o'clock, as near as I can remember; I was up there about two hours. I was interested in loading cotton meal. The principal part of this cotton cake or cotton meal was stored on the dock; was abreast of the ship, and there was some under the sheds, if I remember right. By abreast of the ship I mean out in this open space. I know the cargo came out of the cars and was piled there abreast of the ship. I don't remember whether my ship was at the upper end of the lower shed or the lower end of the upper shed. I don't remember exactly; it was about the lower part; must have been the upper part of the lower shed, but I won't be sure of that; pretty near the middle of the cotton wharf. The other ship that was there was at the upper end, close alongside the wharf, immediately in front of me. I am not altogether positive with what that other vessel was loading. I know she wasn't taking on cotton that day. I stated that I thought there were one or two other ships there; I will say one or two, but I am sure of one; the other was still further up, at the extreme upper end. I should say that my best recollection is that there were two, but I won't be sure. There was no vessel at the conveyor. I left there, I guess, between twelve and one; I stayed there about two hours, I suppose. I did not come back that day. I cannot say what time it was that I heard or saw an engine coming; I should imagine about between eleven and half past eleven; along about eleven o'clock, I should say.

Q. It was down at your end of the wharf where the steamer Malabar was loading?

A. Backed the train up the length of the wharf; went up and backed down again. I couldn't say whether the cars were loaded or unloaded. I don't know how far up they went, but they went past the Malabar. I don't know how many cars there were. It went up and in five minutes or so came down again. If I remember

right, they were switching cars when I left. I think they
155 ran some cars up, backed down and switched on the other track, but I am not sure. As near as I can remember they switched these cars from one of the tracks in front of the wharf onto the other, and left some of them there. I don't remember whether the engine was on the wharf when I left or not. Of course, at the time I didn't attach enough importance to it to even remember. This cotton which was headed up that I speak of was between the tracks and the river front, on the wharf, just above the Malabar and towards the other vessel. The cotton-seed meal was lying, perhaps, abreast of where the Malabar was; I think there was some in the shed above there. By cotton headed I mean simply bales standing on end. Generally store it end up and as straight as you can.

Q. This cotton which was headed consisted of but one line of bales and had no bales piled on top?

A. No; just bales headed up; one thickness, the length of the bale. I think there were two tracks between the shed and the outer edge of the wharf or dock. In the rear there is one track, I know, goes right alongside of the wharf to discharge cargoes from the cars to the wharf.

Plaintiffs' counsel reads from the deposition, as follows:

Redirect examination by Mr. CLEVELAND:

Both sheds were piled with cotton, piled as I have described.

Q. Did you go through either shed?

A. Yes. I could not see from one gangway into another.

Q. As you walked through a gangway describe how the cotton was piled?

A. The cotton would be perhaps seven or eight tiers, according to the size of it, seven or eight tiers high. By cotton piled I mean one tier laid down flat, another put right on top, and another one on top of that; piled right up like a stairway. We took some of the cotton meal or oil cake which was loaded on the Malabar
156 from cars; considerable, I think. That's the way it was brought, and they delivered it in the ship that way.

Q. How was the oil cake taken from the cars to the ship?

A. Well, the railroad company put it out; they had it brought to the wharf and put it out of the cars and piled up, and then the mate of the ship goes and counts the piles. I don't know how much of this oil cake that I loaded on the Malabar was under the shed. Mr. Kent had charge for me of loading the Malabar.

Q. Is cotton that is awaiting transportation from New Orleans usually piled or headed?

A. Well, it all depends upon the space in front that you have. Oftentimes it is put out on the wharf and some of it is piled on the dirt.

Q. Anything ever call your particular attention to the condition of the cotton at Westwego on November 12, 1894, and if so, what was it?

A. I had to get a stage plank from the rear of the shed to the ship, or my foreman did, and he called my attention to the crowded condition of the wharf and to the chance he had to get the plank through to the ship.

Q. So you saw the crowded condition of the wharf?

A. I mean under the shed.

Defendant's counsel reads from the deposition as follows:

Recross-examination by Mr. TAGGART:

I think the gangways which ran across the wharf ran clear through. There was nothing in any particular gangway running across the wharf to prevent my seeing across. I could see through them.

Q. What you meant, then, in answer to Mr. Cleveland's question, was that you couldn't see from one gangway to the other?

A. No, sir; because they were piled higher than a man's head.

Q. When you say this cotton was stepped up, you mean that the lower bale was laid out closer to the track than the bale above it?

A. Than the next bale on top; about half a bale. Each
157 one receded back about half its width. The bales lay lengthwise, parallel with the track and with the ship. The next bale would be laid half a bale further back. Like a bricklayer laying a wall. And the lengths would be end to end as they lay there on the wharf close together.

Plaintiffs' counsel reads from the deposition as follows:

Redirect examination by Mr. CLEVELAND:

Q. Do I understand you that between the outer line of the shed; that is, between the line of the roof of the shed and the inner line of the track, which was between the shed and the outer edge of the wharf, cotton was piled as you have stated?

A. From near the edge of the track, up near the edge, and it extended beyond the line of the roof as I have stated.

GEORGE H. KENT, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

My business is stevedore foreman on the levee. I was such in November, 1894. I was engaged in loading the steamship Malabar for Ross, Howe & Morrow, ship agents at Westwego. I was engaged in this business on the day of the fire. I can't remember exactly how many days it was before the fire that I got there on my steamship. I am positive it was more than two days, but how much more I don't remember. During the days that the Malabar was at that dock at Westwego, I was there during the whole of the day. When the Malabar first steamed alongside of the wharf she lay about the centre of the sheds.

Q. Which shed, the upper one or the lower one?

A. The lower one. I can't say how long she lay there, but the captain refused to lay longer on account of having no water.
158 They then shifted him from there down to the grain berth opposite the elevator, and had a towboat to come in and wash out the mud. Took soundings and found the ship was lying aground, and the captain refused to stay any longer, and then had us hauled opposite the elevator and had a towboat come in and wash the mud; and they trucked the oil cake from the upper berth down to the grain wharf, and we stayed down at that wharf until the following day, and on the following day we shifted back to the berth we were in at first and then completed our loading. In the course of my loading at Westwego I had occasion to notice the condition of the sheds on the dock there.

Q. Will you please to describe their condition as to cotton?

A. Well, in all my experience, and I have been foreman on the levee for eighteen years, I never saw a place so jammed in my life; it was just piled almost to the roof, and from one end of the shed to the other, and there was probably three or four gangways, very narrow gangways, left in between the cotton; too narrow to shove a truck through.

Q. What was it called your attention, particularly, to these gangways, if anything?

A. The ship, on account of low water, could not get into the wharf, and I had to get some 30 or 35 foot planks to reach from the cap of the wharf to the rail of the ship. The superintendent told me that at the upper end there was a flat car with some long planks on it, that I might use if I got them. I had occasion to go there and get those planks, and had to carry them through the gangway on their edge, because we couldn't carry them flat. I couldn't get a cotton truck through, because they were not more than two feet wide, and, as I say, I had to edge the planks to get them through. This flat car was on the upper end of the upper shed to the woods. The oil cake was taken from the wharf, between the track and the cap of the wharf, the edge of the river. I mean there was a
159 lot unloaded from cars, and there was a lot that wasn't unloaded because they didn't have room to unload it until I would take the other off the wharf and put it aboard ship, and so, when I got one car on we would then take another. When one car got empty they would take the full cars and unload them. I must have had 25 or 30 men working for the stevedore. I don't know exactly how many. There were brothers named Rheinhard, one named Nie, one named Sykes, one named Ellis and lots of others that I can't remember, all white.

Q. Did you, at the time of this visit to Westwego, take any notice of any of the fire apparatus that was there?

A. No, sir; I couldn't see any of that; I didn't look for that. The floor of this dock was composed of planks of some kind.

Q. Were they close together where you observed them?

A. Well, I noticed one time, in the summer time, when we would be taking a lot of meal aboard the ship, some time previous to this

Malabar affair or this fire, that in sweeping the wharf lots of this meal went through the cracks of the wharf.

Q. How near to the track that ran between the shed and the river did you notice cotton piled on this dock?

A. So close that a man couldn't stand next to the cotton and allow a freight car to pass him.

Q. Did you, on any of your trips, at any time, to Westwego, see any men at or about any of the plugs?

A. I remember distinctly, on one occasion, seeing a man drinking from one, but it was in the summer time and there was nothing at the time under the shed but meal and oil cake.

Q. Did you get any of your cargo for the Malabar from under either of the sheds, do you recollect?

A. No, sir; I won't be positive, but I think we got it all right from the front of the wharf, all of it was loaded right from the front of the wharf. I couldn't say positively how many of these gangways there were in these sheds, although I looked, but to the best of my knowledge, I think there were three through the tiers of cotton from the woods side of the wharf to the river side.

160 Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

I was accustomed to go up there to load ships. I had been loading there since Westwego started, different times. I know I have been there ever since they commenced. And frequently loaded ships there. I have never been engaged in loading cotton, but I have been there loading ships with other cargo, that were taking cotton at the same time. My business was what they call "round cargo." I am not a cotton man. I went up there with this steamer, the Malabar, to load oil cake, and found my oil cake on the front of the wharf. It had been unloaded there from cars which had been brought in. I have very seldom found my oil cake on the front of the wharf; that was about the only time that it was not unloaded under the sheds. It was very frequently unloaded from the cars in the rear, and deposited on the wharf. I had nothing to do with the unloading of the cars. I had a gang of men under me who were employed by the stevedore. I would go up there and take the oil cake or meal or other cargo, wherever I would find it in the shed and take it from there to the vessel, and the railroad employees had nothing to do with loading the ship or assisting me in any way.

Q. All that you had to do when you went up there, was to inquire where the particular cargo was that you were to load?

A. Yes, sir; that's all. To find out from those people where our cargo was situated.

Q. And then you would go to work?

A. And truck it to the ship.

Q. Wherever it might be, on or about these sheds?

A. Yes, sir.

Q. There was no particular place for depositing these cars, was there?

A. Well, there was a rule that the cargo must be delivered
161 within the reach of the ship's tackle; that, I believe, means not further than 75 feet from the ship's side.

Q. But did you find that was always observed up there; did you ever go beyond 75 feet at any time?

A. Within 75 feet from one end of the ship to the other. As long as it was put out abreast of the ship, fore or aft, it was supposed to be within reach of the tackle.

Q. Now, you speak of gangways, three, or thereabouts, being in this lower shed. You were opposite the lower shed when you were loading, were you not?

A. Yes, sir. And these planks that I got, I brought through the gangways in the lower shed, to my ship, and that was all that I had to do with these sheds or any part of this wharf, except the front, where the cotton-seed meal was. I had no connection with the upper shed while I was there; that's the only shed I had any business to go through, at all, was just getting those planks through. The balance of the cargo lay on the face of the wharf.

Plaintiffs' counsel reads from the deposition as follows:

Redirect examination by Mr. CLEVELAND:

Q. You speak of getting through or having these planks carried through a gangway in a shed, was that in the lower shed that you went through or that you carried the planks through, or was that the shed furthest up the river?

A. That was in the shed furthest up the river. I may get mixed up in those sheds. I think there were two on the dock. I won't be positive about the two sheds. I know we got the planks from the upper shed. This flat car, with those planks on her, lay on the upper edge of the wharf, and we had to carry them on down and then bring them through the shed, through a gangway in the shed. On the start the Malabar was lying just about half way between the elevator and the upper part of the wharf, but what shed
162 it was, I don't remember. There was a ship lying ahead of us, loading, one of the Harrison boats, loading cotton there. And we came in astern of her. I am mixed up on those sheds; I don't know exactly whether it was the upper or lower shed; I know we got the planks from the upper shed and brought them through. But whether we brought them through the upper or lower shed I don't recollect.

Q. This crowded condition of the sheds, was the cotton which you saw there piled in both sheds, or only one?

A. The entire wharf.

Q. Did you notice cotton that was piled outside of any shed at all?

A. Yes, sir. By launching the planks. I mean shoving them over the tops of the bales of cotton and piles of oil cake. We got the railroad men to give us a hand at one time to launch those planks over the top of the cargo, to get them into the ship's gangway.

Q. That's when you got them between the track and the river?
A. Yes, sir; bringing them right out to the ship.

Recross-examination by Mr. TAGGART:

Q. Now, Mr. Kent, you referred to these planks, and leaving out of view the designations upper and lower shed, wasn't it the shed opposite your ship through which you brought these planks?
A. Well, we came through a gangway opposite the ship, but we had to carry the planks along the woods side of the shed; there was a gangway. There is where the rear track comes along, and we carried them along there until we came to a gangway we could pass through immediately above our ship, and came through to our ship; we didn't carry the plank to the ship and then down along the wharf. The first plank we got, I sent four men to get it. I didn't go myself. I sent them to where this flat car was at the upper end of the wharf, and when they went to get the other plank I went up there too. They couldn't turn to get it out, and we had to
163 take the end of the plank and launch it over the cotton, and then brought it down until we came to this gangway to get through. That was up at the upper end, almost abreast of the ship, and then we crossed through to the ship.

By Mr. CLEVELAND: These planks were 30 or 35 feet long; they were twelve inches wide and three inches thick.

M. J. SANDERS, recalled as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

Labor troubles existed in October and November, 1894, at New Orleans. The origin of the troubles was an attempt by what is known in New Orleans as the white screwmen to exclude colored screwmen from working at vessels in New Orleans or in the port of New Orleans. The white screwmen took the action of knocking off from all vessels and then deciding that they would not commence work again except with such ship agents as would agree to employ no colored screwmen. One ship agent, I believe, did make some sort of an arrangement with colored screwmen with the intention of doing away with the white screwmen on his vessels, but, owing to certain outrages which were committed upon the men working upon his vessels and upon the crews of his vessels, he gave up the fight. We took it up, and the result was considerable trouble, intimidation, threatening and shooting after we had contracted with the colored screwmen to do our work, and finally our wharf was destroyed by fire on, I believe, November 4th, after which we obtained the protection of the Federal courts and went on with our work peaceably.
There was more or less an unsettled state of affairs and more
164 or less intimidation for, I suppose, three or four months after November 4th. The terminal of the West India Steamship Company was within the city of New Orleans.

Q. Look at the paper which I now show you, which is Plaintiffs' Exhibit No. 36 (printed *post*, at p. 299). I call your attention to the words "delivery unrestricted." Are you familiar with such a form of engagement note or notice?

A. Yes. This is something like the present form, with some slight additions, and, if my memory is correct, is about a copy of what was used in 1894.

Q. Please tell me what, in 1894, among the merchants and shippers entering in New Orleans, the words "delivery unrestricted" meant?

A. This is a peculiar form of delivery which is used only by the Texas and Pacific railway and certain connections of theirs in Texas. The usual form of engagement note calls, as a rule, for a certain date of delivery to the vessel. The Texas and Pacific railroad and certain connections for many years have used the unrestricted term, because they did not desire, as I understand it, to be held to deliver the cotton at any specified date and it has always been understood that the rule must work both ways; in other words, the railroad was not bound to deliver the cotton by any particular date, nor was the steamer obliged to take delivery of the cotton at any particular date. The restriction as to actual time has never been definitely settled; it might mean unrestricted for the whole term of the season.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

Q. Mr. Sanders, these labor troubles you speak of related to steamship labor, did they not, entirely?

A. Well, shipping labor entirely. I don't know that there were any sailing vessels in port at the time, but if there were, they
165 were probably also affected. It would affect the railroads where vessels loaded at their own wharves, because the men working on the ships, of course, take delivery of the cotton on the wharf of the railroad.

Q. The result of these troubles was to cause a considerable congestion of freight, was it not, which ordinarily was carried away by vessels?

A. I don't know that there was any great congestion from that cause. The stoppage of labor during October and November was not possibly more than a week's time. That might have congested it somewhat, but, after we got working under Federal protection, we moved our cotton as rapidly as we had ever done before, and, with the one exception of the week, in about the early part of November, we had no congestion on our wharf at all. I fancy the congestion was more the result of the rush of the season's business—an unusually large cotton crop—than the labor troubles.

Q. Was there not an unusually large cotton crop?

A. I think that was the difficulty, a very large crop that season, and it had to be rushed to market very rapidly; very rapidly indeed. There is no doubt there was congestion at that time, but I

don't think it was entirely owing to the labor troubles, but the congestion was there.

Q. Mr. Sanders, you say this term "unrestricted" was used only in T. and P. contracts of this character of engagements; is that correct?

A. My recollection is that it was used until possibly quite recently only by the T. and P. road and their connections. Now, there is a modification, somewhat in this season, and possibly last season. I think I am correct in saying that in 1894 only that road—I would like to qualify that, if you will permit me. There are some of the connections of the T. and P. road, for instance, the Southern Pacific Company, and other possible connections. The Southern Pacific road brings in cotton on such engagements as this. And the T. and P., I understood, for reasons of its own, declined to enter into
166 engagements, in a great many cases, to deliver by any particular time. The inference unquestionably was that the other party was entitled to the same right, as to the reception of the cotton. I never knew the Texas and Pacific to controvert that inference.

Q. Isn't it a fact that in conversations, that Mr. Miller has insisted that the Texas and Pacific wouldn't assent to that arrangement, and insisted on the immediate reception by your own steamship line, of the cotton when it arrived?

A. I cannot say. Mr. Miller may have said so, but it certainly had no effect. We would certainly never dream, of course, of making an engagement which would be binding on one and not on the other. I couldn't say positively in regard to that; it may be so; practically, of course, it has been without result, for the obvious reason that we could not agree to it.

Plaintiffs' counsel reads from the deposition as follows:

Redirect examination by Mr. CLEVELAND:

Q. Mr. Sanders, will you state, if you please, what watchmen you had engaged for your company at its terminal in the city of New Orleans prior to the destruction of the dock on November 4th?

A. I can't remember the exact number of men, but we doubled or trebled our force, and if I remember correctly, immediately after making the contract with the colored screwmen, and anticipating, possibly, some incendiarism, I believe we had six or eight, possibly more men, at night on the cotton which we had on our wharf.

Q. And what accumulation of cotton did you have on the average on your wharf?

A. At that time we had the cargo for a small steamer that was due, I think, some 4,000 and odd bales. That was in the city of New Orleans, at the place I have mentioned. We, of course, also notified the police that we anticipated difficulty, and that we would expect them to keep particular watch on our wharf, and have men there.

167 Defendant's counsel reads from the deposition as follows:

Recross-examination by Mr. TAGGART:

Q. What other freight did you have there besides the cotton?

A. I think, some 200 tons of cotton seed, oil cake, and very little else. That was right in the city of New Orleans. On the levee, in the centre of the business portion of the city. Our line was one of the steamship lines which took up the fight against the white screwmen. And it was at that time, and for some time after, we kept a number of extra watchmen on. The fire on our wharf broke out, I think, about noon on Sunday; about midday on Sunday the 4th, I think, of November.

Q. What was the size of your wharf?

A. Well; the space where this cotton was stowed would probably be some 400 feet long by some 70 feet in width. I think there were more than six men on watch on the wharf. I fancy there were more. They were spread along over the freight, on top and on the sides of it, and patrol-ing it generally. This cotton was not piled in sheds. The cotton was headed, as they call it, close together on the wharf under the shed, and also covered with tarpaulins. We had, at that time, sheds some 700 or 800 feet long. Open at the sides. We were not allowed by the authorities to close it in. These watchmen were Boylan watchmen employed by us. The fire lasted possibly three hours.

L. HERZOG, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I reside in New Orleans, and have lived there quite a number of years. During 1894 I was in charge of the Illinois Central property at Southport; that is the elevators and wharves. Southport
168 is not within the limits of New Orleans; it's in another parish, but it's only about a mile above the limits of New Orleans; that is, of the city of New Orleans. It is not one of the terminals of the Illinois Central railway. The terminals are in the city, but it's a branch of the Illinois Central road running out to the river, in Jefferson parish.

Q. Will you please to describe, generally, what you have at Southport?

A. The company owns the wharf there, covered with a shed—half covered only—and two elevators. The loading of ships is done at Southport. I recollect the time of the labor troubles in New Orleans; about October and November, 1894.

Q. State, if you please, what extra or additional precautions you took during the time of the labor troubles to guard Southport?

A. We had a number of special watchmen engaged, who were sent to New Orleans by the company from Chicago and other points, and some were engaged here in the city. We had at one time,

probably, 25 men, extra men, at night, and perhaps one-half that number in the daytime.

Q. What fire apparatus did you have there? Will you describe that to us?

A. We had at that time eight stand-pipes with hose attached to each, with a hundred feet of hose attached to each stand-pipe, and they were 200 feet apart, so that the hose from one could reach far enough to meet the other. Then we had a number of fire-extinguishers. I don't know how many at that particular time, but we had, during a certain part of that season, as many as twenty-five, or perhaps more. By fire-extinguishers I mean the Babcock fire-extinguishers.

Q. Did you at any time have any drill of men for fire purposes?

A. No, we had no drill, but we tried the fire apparatus. It is customary with all railroads to fire off the extinguishers once in a while, and we also saw that the hose was in proper order. For some time we tried the hose every day, but I don't know whether
169 that was at that particular time. We tried it every day, or rather, we washed the wharf off every day, and at the same time tried the hose.

Q. What accumulation of cotton did you have at Southport at any time in November, 1894?

A. I am hardly prepared to answer that question, because we had at one time as many as 14,000 bales, and at other times perhaps one-half.

Q. How was it stowed—piled or headed?

A. Headed; all headed. We head our hose rolled up at that time on reels. It was fed from a tank. The tank was about 150 or 200 feet from the wharf. There was an understructure holding the tank. The tank holds 58,000 gallons.

JOHN GASSENBERGER, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I reside at Westwego, right opposite the elevator, on the Zeringue plantation. I keep a saloon there. We lease the whole place, and also keep the stock on the Zeringue plantation. I was engaged in this business in November, 1894. I couldn't exactly say that I recollect the day of the fire at Westwego, but I recollect the fire. I recollect the occurrence of the fire. I first heard of that fire between 7 and 8 o'clock in the evening; I first heard some screaming of people on the levee of a fire on the wharf. I was in the saloon at that time. I at once went right down to the elevator and gave the alarm, in order to get the switch-engine out to get cars out from the wharf, and blew the whistle. I blew the whistle in the engine-house attached to the elevator.

Q. When you got there who did you find in the engine-house?

A. At the present time, didn't find any one. The watchman was

making his rounds in the elevator. There was no one in the engine-room.

170 Q. How long after you first blew the whistle was it before the engineer came?

A. About five minutes. He lived right at the canal with his family. I kept on blowing, to get everybody there I possibly could, and in about five minutes the engineer came. Before the engineer came nobody started the engine. I did not, because I didn't know anything about it.

Q. How soon after you first blew the whistle did the watchman appear?

A. Oh, at once. He heard me coming, heard the people screaming, and he was down in a few seconds, you may say. I stayed there in the engine-room about half an hour. I assisted there—saw there was a sufficient quantity of coal. I didn't know how long it would last, and thought I would assist him in getting more coal in. They had the coal-house right next to the engine-room. I helped bring in more coal.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

Q. Have you any way of fixing the exact time that you heard this screaming?

A. No; I ain't positive exactly.

Q. Did you see the fire when you heard this calling?

A. Yes, sir.

Q. And how much was on fire?

A. That was on the upper portion. The upper shed. There was very little fire in there when I saw it. The fire was about the second division on the upper shed; you could see it under the roof, by being on top of the levee. I went down on top of the levee, and ordered all my men out at once, to go on the wharf and try to get out what they could. I myself went down to the elevator. The fire was plainly visible in the upper shed. I couldn't tell you how rapidly it spread. I was occupied in the elevator.

Q. How much fire could you see as you went down on the levee?

171 A. Oh, going down, I didn't take time to turn around; I was that anxious to get down. My place is right opposite the wharf. Right northwest from the wharf, you may say. And about 400 feet from it.

Q. When you heard this calling you looked, if I understand you, or went to see what it was?

A. I went right at once; I heard my darkies, who were on top of the levee, screaming fire, and I at once ran down; didn't stop, only to tell them to come on and assist.

Q. Was there any time that you saw the fire before you got to the elevator?

A. No, sir; when I got in the engine-room at the elevator, there was, at that moment, nobody there, but the watchman came just

the moment after I got there; he was making his rounds at the present time. He was there while I was blowing the whistle.

Q. Do you know what he was doing at that time?

A. He was continually keeping up steam. He was firing up, to get steam up. The engineer came from the company canal, just below there. I reckon it was about five minutes, more or less, before the engineer came. I think, about five minutes. I can't fix the time at all under those circumstances. When the engineer came he started the pump. There was a large pump in the engine room. That large pump was connected with a heavy pipe running to the river; a 6-inch pipe, and that then feeds the large tank there was above. That tank was about 30 or 40 feet above the ground around there; it was a considerable height above this shed.

Q. So from that tank there would be considerable pressure on the pipe running to the shed, if it was kept full of water?

A. Yes, sir.

Q. There was a four or five inch pipe running from this tank off under this wharf, wasn't there?

A. I don't know the size of the pipe running from the tank to the wharf. There was a pipe, an iron pipe.

Q. When did you see the fire after you went to the ele-
172 vator?

A. I saw it when I first went down and when I came back. I stayed down there about an hour. Everything was ablaze then. Everything all covered with flames, and burning up. It spread rapidly.

Plaintiffs' counsel reads from the deposition as follows:

Redirect examination by Mr. CLEVELAND:

Q. You don't know anything about the pressure from that tank into the pipe, do you?

A. No, sir; I couldn't tell you. I don't know the height of the tank, except to guess it. I never measured it. In my estimation it was between probably 35 and 40 feet, that's the top of the tank. The foundation of the tank is considerably below the levee.

Defendant's counsel reads from the deposition as follows:

Recross-examination by Mr. TAGGART:

Q. But the bottom of the tank, holding the water, is not considerably below the levee?

A. No, sir.

Q. I am not speaking of the bottom, I am referring to the foundation above the levee.

A. Yes, sir.

Q. That is, the ground on which the timbers rest which support the tank?

A. Yes, sir.

Plaintiffs' counsel reads from the deposition as follows:

Redirect examination by Mr. CLEVELAND:

From my house to the engine-room was, in my estimation, about 500 feet.

Q. Were there any police over at Westwego, that you ever saw?

A. I am one, personally.

Q. You are the one person; you are the one policeman for that district?

A. Oh, we have several more.

Q. I mean at that time.

173 A. There was a man by the name of Jerome Lafrance. I don't know where he was at that time. He was the policeman for that district; I couldn't say where he was then. There is no fire-engine near there. The closest fire-engine we have is in Gretna. Gretna is about five miles from my place. This other policeman lives seven miles from me. I am not a paid policeman. I am only a policeman specially deputized. I am not entrusted with any police duties.

Defendant's counsel reads from the deposition as follows:

Recross-examination by Mr. TAGGART:

Q. At that time there were no disturbances over there, were there, of any kind?

A. No, sir.

Q. And had been none?

A. At that present time; no, sir.

Q. Or in connection with any labor troubles here in New Orleans, there had not been any disturbances up and about there, that you know of?

A. No, sir; not that I know of.

Plaintiffs' counsel reads from the deposition as follows:

Recross-examination by Mr. TAGGART:

I did not hear prior to that time of any supposed incendiary fires having taken place on the dock. There were labor troubles at Gretna before that time. And I think an injunction had been issued out of the United States court on account of them before that time.

Q. What were the troubles at Gretna?

A. Well, from what I can understand, it was to give them half and half in the work on the ships; that is, on the Parish of Jefferson side. It was a trouble between the white screwmen and colored screwmen who lived at Gretna. Not exactly in Gretna, but between the whites of Gretna and the colored laborers, no matter where they lived, whether over here or in Gretna. I know young Valle.

174 Q. How old a boy is he?

A. Somewhere around in the neighborhood of 20 or 21; I don't know exactly.

THOMAS N. BOYLAN, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am principal of the Boylan Detective Agency. I have been connected with the police since 1855, in New Orleans, and have served in almost every capacity, as chief of police and superintendent, and this agency was organized in April or May, 1880. Mr. Farrell was then the principal. He died during the exposition, in January, 1885, and I assumed the duties from that time to this, as the principal. In October, 1894, there were labor disturbances in the city of New Orleans. I don't remember exactly what time these disturbances began; some time within a month of that time; about a month or three weeks or so; some time in November, or at least it was some time during that month, probably a little previous to that. I mean the month of November. I do not remember how early in October they did begin.

Q. You know the place called Westwego?

A. Yes, sir, I know of it.

Q. In November, 1894, was it within the port of New Orleans?

A. No, sir.

Q. What parish is it in?

A. I think it's in the parish of Jefferson, adjoining the parish of Orleans.

Q. And had it, in November, 1894, any city, village or county police protection?

A. They had a police jury and sheriff and marshal; one or two men; I don't know that there were any more than that—that is, for the town of Gretna. I think Westwego was under the jurisdiction of Gretna. I think there are several fire-engines in the town of Gretna; there were some time ago. I won't say positively
175 there was in November, 1894. I know there has been, but I haven't been over there for a good while. I don't know how far from the Texas and Pacific Railway Company's dock at Westwego the nearest fire-engine house was in November, 1894. I am not familiar with Gretna nor with Westwego. That's the duty entirely of our superintendent and captain; considered the harbor work.

Q. What was the alleged cause of the labor disturbances in November, 1894, at New Orleans?

A. Well, there was a feeling between the two bodies of labor, the white and colored, and it appears there was some dissatisfaction between them. The whites seemed to be getting all the work and the negroes didn't like it, and the result of it was that some of the ship agents took upon themselves to employ the colored men altogether, and that brought about the trouble. That was about the cause of it. The dispute was between the cotton people, that is what are known as cotton screwmen and longshoremen. It was principally between negro cotton screwmen and white cotton screwmen.

Q. Do you know, on November 12, 1894, what class of cotton screwmen the Texas and Pacific Railway Co. employed?

A. I don't know that they employed any.

Q. Do you know what class of labor was employed by the stevedores at work at Westwego, whether colored or white?

A. Well, previous to this trouble they were mixed, white and black.

At one time the Texas and Pacific Railway Co. employed our people, and do so yet. They have for quite a while. We are still employed by them; we furnish them men; watchmen. At the present time we furnish them watchmen. I can't remember exactly when we first furnished any men to the Texas and Pacific in 1894, but I have memoranda here from which I might be able to give you an idea (the witness produces memoranda, and referring to it, says):

In October we had men working for them, I know; October,
176 1894. We had men employed on the first of October, 1894.

On the 7th of November there were three day men at Westwego, and five night men; on the 8th of November there were at Westwego three day and three night; on the 9th, three day and three night men; on the 10th, three day and three night; on the 11th, three day and three night, and on the 12th, three day and three night. Then on the 13th there was one night man and no day man.

Q. From the 1st to the 14th of November, 1894, the labor troubles were about at their height, were they not?

A. I don't recollect exactly the dates. I don't believe that the excitement had reached its height on November 9th; probably it was some time subsequent to that.

Q. In November, 1894, did you make any report to anybody?

A. Yes, sir; generally we make reports in the cases of cotton fires to the cotton exchange. I have copies of all the reports that I have made.

Q. I would like to have you produce those, if you please. You also had reports made to you, Col. Boylan, had you not, by your various employees from time to time?

A. By all means; for when anything happens or anything occurs in any way connected with what we have in charge, it's their duty to report to the officers, to the sergeants and roundsmen, and through them it comes to me.

Q. You did, as a fact, receive such reports from your various employees, did you not?

A. I suppose we did. O'Connor was my superintendent at that time. J. P. McArdle was our captain of the harbor. He was in my employment and is still. And so is Captain O'Connor. He is the superintendent of my office.

Q. Col. Boylan, did you furnish any men to any of the other railway companies in October and November, 1894?

A. Well, we furnished all the Southern Pacific watchmen and the Northeastern's.

Q. To any other?

A. Sometimes, but not as a general thing. It's a regular
177 thing with the T. & P., the Southern Pacific and the Northeastern; we furnish them all their watchmen.

Q. But in October and November, 1894, did you furnish any men to other railroads besides the Southern Pacific?

A. The Southern Pacific and Northeastern. No others. The sheds or docks of the Southern Pacific, where our men were employed in November, 1894, were on both sides of the river. Algiers is right opposite the city, and they have a depot on the city side and on the Algiers side. The docks or sheds of the Northeastern railroad, on their own line, were on what is known as Press street, in New Orleans.

ROBERT E. KERKAM, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am in charge of the United States Weather Bureau in the city of New Orleans.

Q. How long have you been in charge of that bureau?

A. I was in New Orleans twice, first from 1887 to 1890 and again from 1893 until this time. I have with me the record for November 12, 1894; I produce it. These observations were taken under my own direction. A summary of the weather for November 12, 1894, is as follows: The highest temperature during the day was 57, and the lowest was 36. There was no rainfall on the day, and the sky was clear nearly the entire day. The water in the Mississippi was $2\frac{5}{10}$ above zero of the gauge. The zero of the gauge is the low-water mark. Gauges, all river gauges, are graded differently; that is, $2\frac{5}{10}$ on the gauge at New Orleans wouldn't be comparable with a similar gauge reading at Vicksburg, and this is $2\frac{5}{10}$ above the zero of the gauge. In order to get an idea of what that means, the highest water we ever experienced in New Orleans was 18. That
178 was extreme high water; that was a flood stage. This $2\frac{5}{10}$ is considered a low stage. That means above the lowest water mark, and this in comparison with the low-water mark of 74 or 75. Zero is the bottom of the low-water mark. And the water at this time was $2\frac{5}{10}$ above that. It was low water.

Q. When had you had your last rain previous to November 12, 1894?

A. Previous to November 12th; it rained on the 3d from 6.15 in the morning to 3.10 in the afternoon; that was on the 2d.

Q. A heavy rain—the second of November?

A. Yes, sir; from 6.15 till 3.10, a light rain.

Q. Was it a heavy rain on the 2d, or a light rain?

A. It was just a moderate rainfall; couldn't be classed as either heavy or light; it was $\frac{57}{100}$ of an inch. And then it rained during the night between the 2d and 3d, a light rain, of $\frac{6}{100}$. And between the 2d of November and up to the 12th we had no rain. Prior to November 2d it rained in New Orleans on the 28th and 29th of

October. There were showers on the 28th of October during the afternoon from 3.10 to 3.58, and again from 4.05 to 4.15. The rainfall that day was $\frac{43}{100}$ of an inch. There were frequent light showers during the 29th, giving a total for the day of the 29th of $\frac{46}{100}$ of an inch. And between the 29th of October and the 2d of November there was no rainfall.

Defendant's counsel reads from the deposition, as follows:

Cross-examination by Mr. TAGGART:

Our record shows the wind. The wind on the 12th of November was 119 miles in twelve hours and 45 minutes; that was from the northwest; 22 miles from the east in 4 hours and 15 minutes, and 51 from the southeast in 7 hours.

Q. Now, the 119 miles in 12 hours and 45 minutes; just explain what that means, please?

A. It means that the wind blew from the northeast for that length of time, and that that number of miles were registered.

179 Then, to get the rate per hour, although it might not be exact, you would divide the 119 by 12, and it would give you the average rate per hour. It would give you the average rate from the northeast, but this record does not show whether it was a continuous wind from the northeast, or whether it changed to the northwest or the southeast. The maximum velocity of the wind during the day, between 7 o'clock in the morning and 7 o'clock in the evening, was 11 miles from the northeast. That was the highest velocity taken at a 5-minute measurement of the wind thermometer.

Q. Our record shows the direction and velocity of the wind at 6 p. m., and on either side of 6 o'clock. At 7 o'clock it was southeast and blowing nine miles.

By Mr. CLEVELAND:

Can you give us a record of those entries on November 12th, giving us all the particulars you have relating to that day, in this book or in your record?

A. I will give it to you as it appears on record in my office, and certify to the copy over my signature.

(The following is the record:)

Subject: Meteorological data on November 12, 1894.

U. S. Department of Agriculture, Weather Bureau.

Office of the Observer.

(Station) NEW ORLEANS, LA. (Date) *March* 18, 1897.

"Statement showing the weather conditions at New Orleans, La., on November 12, 1894, as copied from the U. S. Weather Bureau records.

"Light frost and thin ice reported from suburbs in morning; lowest temperature of morning at station 36° Fahrenheit; clear

180 skies prevailed during the day, with northeasterly winds; there was no rainfall. From midnight to 9 a. m. the wind

blew from the northeast; from 9 to 11 a. m. from the east; from 11 a. m. to 1 p. m. from the northeast; from 1 to 4 p. m. from the east; from 4 to 5 p. m. from the northeast; from 5 p. m. to 6 p. m. from the east; and from 6 p. m. to midnight from the southeast. The wind movement from 5 to 6 p. m. was six miles; from 6 to 7 p. m. 7 miles.

"I hereby certify that the foregoing data was copied from the official records of the U. S. Weather Bureau, on file in this office.

"(Signed) ROBT E. KERKAM,

"*Local Forecast Official & Section Director.*"

THOMAS N. BOYLAN, recalled as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

Q. Colonel Boylan, have you produced the books which I asked you to yesterday?

A. Yes, sir; there is my book-keeper with them now—the time book.

Q. Please state from them the names of the persons whom you furnished to the Texas and Pacific Railway Company in November, 1894. I am asking and calling for the names of the persons who were at Westwego?

A. We had, on the 6th, James Brown on the day, and P. H. Campbell and M. Peters.

Q. And on the night?

A. On the night of the 6th, was D. Brown, E. Peake, P. A. Robeau, B. Solomon and E. Hilderbrand.

Q. Now on November 7th?

A. November 7th, on day duty at Westwego was James Brown, P. H. Campbell and M. Peters, and on the night, J. Lobestein, E. Peake, P. A. Robeau, B. Solomon and another man by the
181 name of P. Schoen, and that's all the night men at Westwego on the night of the 7th.

Q. And now on the 8th?

A. On the 8th, on the day, at Westwego, was James Brown, P. H. Campbell and M. Peters.

Q. And on the night?

A. On the night, E. Peake, P. A. Robeau and P. Schoen. That was the night of the 8th.

Q. And now on the 9th?

A. On the 9th P. H. Campbell, on the day, and J. Lobestein and M. Peters; and on night duty at Westwego were E. Peake, P. A. Robeau and P. Schoen.

Q. Now, on the 10th?

A. On the 10th, on day duty at Westwego, P. H. Campbell, J. Lobestein and M. Peters; and on night duty E. Peake, P. A. Robeau and P. Schoen.

Q. And on the 11th?

A. On the 11th P. H. Campbell, on the day, J. Lobestein and M. Peters; and on the night, E. Peake, P. A. Robeau and P. Schoen.

Q. And on the 12th?

A. On the 12th P. H. Campbell, day, and J. Lobestein and M. Peters; and on the night, E. Peake, P. A. Robeau and P. Schoen.

Q. What you did in relation to furnishing men to the Texas and Pacific Railway Company you did, I suppose, under their orders?

A. Yes, sir; whenever they required more or less men they would always give me instructions to furnish the necessary number. Not always written instructions. Sometimes they would send written instructions for men, and sometimes give the orders to the captain. The condition of the labor disturbances in New Orleans, say about the 8th of November, was very serious, and continued so until such time as the militia was called for by the governor. I think that was late in the month of November.

Q. Have you found out yet what police protection the Texas and Pacific Railway Company had at Westwego from any town, city or village authority?

A. That I know nothing about at all. I simply knew that
182 among the watchmen over there, there were men employed by the railroad company also as watchmen. That I only know from the reports of the men, because our men had supervision over them.

Q. Well, if you will confine yourself only to things regarding which you know of your own knowledge, please tell me, if you know, whether the Westwego town, city or county authorities furnished police protection to the Texas and Pacific Railway Company?

A. I couldn't say positively, but I hardly think they did.

Q. Have you ascertained yet how near the nearest fire-engine house was to the dock?

A. No, sir; never gave it a thought. I am not familiar with that part of the river. For many years I haven't been over there, and during most of this riot I was an invalid in a manner, but still all the reports came to me; I was in the office.

Q. Will you be good enough to look at the paper which I now show you, dated New Orleans, November 13, 1894, and consisting of four typewritten pages, and which will be marked for identification "Plaintiffs' Exhibit No. 3." Will you be good enough to state whose signature that bears, Colonel?

Paper marked for identification Exhibit M (printed *post*, at pp. 281 *et seq.*).

The witness, being handed the document referred to, says:

That's my secretary's, H. S. Michel.

Q. You recollect whether you read over the report before you furnished it?

A. As I say, it's possible I was unwell at the time; I may have been sick at the time when this report was made, but when I am in the office I generally sign the reports myself, but it's possible I was not there at that time, although I read them afterwards certainly.

I read them over afterwards when I recovered if I did not read them at the time. My attention is always called to them.

183 Q. Do you know of any corrections you have made in your reports to Mr. Smith?

A. I don't know that I ever did make any.

Q. Do you know who made up the report that I have just shown you; it's signed, you say, by your secretary, but who made it up?

A. The report speaks for itself, I suppose, as to who the report was made by. The captain, I think, made up the reports.

Q. Won't you look at it and state to me, Colonel, all the persons who apparently had a part in the making up of the report, giving me their full names and addresses?

A. This report was made by Captain J. P. McArdle. He is now in my employment. This report was made by Mr. McArdle himself. He made it up, of course, and he gives the names of the different officers who give him the information, and they are all named in the report.

Q. And judging from that report, you would say that McArdle made it up, and he alone?

A. He alone, through information he received through other sources, and he gives the names of all the persons from whom he received statements. I have never been at Westwego since that cotton shed was put there.

Q. Either before or after the fire?

A. Oh, I have been there before the fire, but never while that cotton shed was there, but before that cotton shed was in existence. Since the cotton shed was built I have never been there. I know nothing of the conditions surrounding the cotton at Westwego. The names of the head men in my office in the months of October and November, 1894, are as follows: W. J. O'Connor was the superintendent. He was the next under me. He was interested with me; had an interest in the business. Captain McArdle was captain of the harbor; has charge of the harbor. The name of my secretary was Michel, and the name of my book-keeper at that time Elfert. That is about the detail of nearly all the principal portion of the office, except possibly our cashier, and he has nothing at all to do with these matters.

184 Q. You keep copies of the reports that are furnished by you to your various employers, do you not?

A. That depends altogether upon the circumstances. Some reports are not of sufficient interest to send out, but in most cotton cases we do, particularly to the cotton exchange.

Q. Did you report from day to day to the Texas and Pacific Railway Company in October and November, 1894, while you were furnishing them men?

A. We reported only just such services as were necessary, in case of insurance, and the details at the depots and other incidents, the condition of the cars and such things as that, whether the seals were in order; that's a daily report. We made a daily report of what took place at Westwego in case there was any necessity for it.

Q. Well, did you as a matter of fact make to the Texas and Pacific

Railway Company during the months of October and November 1894, daily reports of what occurred at Westwego?

A. Not unless there was something to report.

Q. I suppose you made a report, did you, of the fire?

A. Oh, certainly.

Mr. CLEVELAND: Now, Mr. Taggart, I will ask you to produce that report.

Mr. TAGGART: What report?

Mr. CLEVELAND: The report that Mr. Boylan made to the Texas and Pacific Railway Company on the fire.

Defendant's counsel reads from the deposition as follow-:

Cross-examination by Mr. TAGGART:

I have been at the head of this agency since 1884—January, 1885. It had been fully established since in 1880. It was not the successor of any previous organization of a similar character. It has extensive business connections in the way of police protection and watching here in New Orleans.

185 Q. What territory does its officers control? I mean under private employment of the character you have been testifying to.

A. Well, the commercial portion of the city, including all the banks, such establishments as that, and a great deal of the upper portion of the city; for instance, the tenements. On the harbor we have a great many men out there; it depends altogether on the cotton season.

Q. That is, in the cotton season you control all of the harbor?

A. Not all, but nearly all of the cotton vessels, and cotton on the wharves, &c. I believe there is another party out there has a little work, but not of any great consequence. We have a majority of it.

By Mr. CLEVELAND: The other concern don't amount to much?

A. They have been trying to make a living at it, but it's pretty hard work.

By Mr. TAGGART: The name of the other party is F. Cuny, I believe. He hasn't any definite place. If they can get watching to do, why they do it. That is in the harbor.

Q. Isn't it a fact, Colonel, that so far as the reputation of your agency was concerned, in many cases, the Underwriters' Association had insisted on your watchmen being placed on the cotton wharves?

A. Yes, sir; that was one of the cardinal rules when we first organized under the auspices of the board of underwriters.

Q. That was one of the reasons for your organization?

A. Yes, sir; on account of the fires on shipboard, and one thing and another.

Plaintiffs' counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

Q. Did you have any other railway companies under your supervision at this time?

186 A. Yes, sir; the Southern Pacific and the Northeastern companies.

Q. And the wharves of shipping companies?

A. That is, while cotton is on the wharf.

Q. You did increase the force from time to time?

A. According to the accumulation of cotton.

Q. As the cotton increased?

A. Yes, sir.

Q. And did you not, as these increases were made, have additional men put on?

A. Certainly.

Q. And directed with reference to it?

A. Yes, sir.

Q. And had all the time then, prior to the 12th of November, such a force of watchmen upon that wharf at Westwego as, in your judgment, and from your experience as the head of an agency guarding cotton, you considered fully sufficient to meet all the requirements of watching at that place?

A. Yes, meet it in this way, with the assistance of the other men that were employed also by the railroad company in addition to our force.

Q. That is, the entire force—you considered the entire force there as sufficient, including the men who were acting under the direction of your officers?

A. Yes, sir.

Q. To fully protect the cotton that was there in the condition in which it was?

A. Yes, sir.

Q. This report, Plaintiffs' Exhibit No. 3, which you have identified, that is a carbon copy made on the typewriter, of a report which you made to the Underwriters' Association?

A. To Marshall J. Smith. He is a member of the board of underwriters in New Orleans, at least one of the insurance agents, and represented the National Board of Underwriters of New York.

Redirect examination by Mr. CLEVELAND:

I knew absolutely nothing of an accumulation of cotton at Westwego.

Q. Therefore, you didn't at all regulate the number of men by the accumulation at Westwego of cotton, did you?

187 A. I know nothing of it myself, personally, but the captain and the superintendent——

Q. Don't state anything which is not of your knowledge.

A. Of my knowledge, I didn't know anything about the accumulation of cotton there; of the quantities.

Q. And as far as you acted in the matter, did you regulate the number of men in respect to the accumulation of cotton at Westwego?

A. I don't know that I did; I knew nothing of the surroundings. I never went there since the depot was established there.

Q. You never knew, did you, of your own knowledge, what number of watchmen the Texas and Pacific Railway Company had at Westwego?

A. My men I knew, but I didn't know anything of the others.

Q. From your own knowledge?

A. Of their men, no.

Q. What is the cotton season?

A. Well, it commences about—sometimes it's earlier than others—but along in September; about the middle of September you may say it will commence. It generally increases from September until about the middle of the winter, and it really closes about May. There is a little here then, but not a great deal, unless it is stored in the presses, and so on.

Defendant's counsel reads from the deposition as follows:

Recross-examination by Mr. TAGGART:

Q. Now, these labor troubles you speak of, they were troubles with steamship labor, were they not, exclusively?

A. Yes, sir; what is known as screwmen and longshoremen, working on steamers, not railroads. Not railroad labor; the labor troubles were with screwmen and longshoremen, and they are the men that work on shipboard and around the harbor. They were men employed to load ships exclusively. The railroad companies had no screwmen or longshoremen in their employ.

188 Plaintiffs' counsel reads from the deposition as follows:

Redirect examination by Mr. CLEVELAND:

Q. These screwmen were employed to load ships from docks—railroad docks?

A. Railroad docks; whenever there is a ship taking in cotton the screwmen are the ones to load the ships. They are not loaded by the railroad help, but loaded by regular screwmen and longshoremen.

W. J. O'CONNOR, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

My name is W. J. O'Connor. I live in New Orleans. Will be 49 in December, and am superintendent of Boylan's protection police and detective agency. I have been superintendent since May, 1893. And prior to May, 1893, I had been captain of the Boylan protection police. I had been in that business, I think, from September, 1884.

Q. Look at the paper which I now show you, which is marked for identification "Plaintiffs' Exhibit No. 3," and which was identified by Colonel Boylan yesterday as a report made on November 13, 1894, to Marshall J. Smith, and state what part you had in making up that report.

(The witness is shown the document referred to and reads same.)

Q. Are you able now to state, Captain, after examining that paper, what part you had in making it up?

A. I hadn't any part in making it up.

Q. And did you question the men who were your employees and sent to Westwego concerning the occurrences of the night of November 12, 1894?

A. Captain McArdle questioned them. I think I was
189 present when he questioned one or two. I don't know which ones, but I was present when he questioned the three day men. We questioned them that night. They were Officers Campbell, Weber and Peters. We brought them, to the best of my recollection, back with us over to the fire.

Q. Were you present when Captain McArdle questioned the night men?

A. Well, I won't say positively that I was, sir. I think I was. I think I was present when he questioned them, and got their statements. No, I was not. To the best of my recollection Captain McArdle got their statements and reported to me in the morning at the river station. I don't think I was present. I think they were taken by Captain McArdle in the Jackson Street office. Captain McArdle questioned Vallee, the private watchman of the railway. I don't think I did, but if I didn't I was present when he was talking to him that night, sir. I went over to the scene of the conflagration that night, and possibly I may have questioned him, but I won't say positively, but I was present I know when Captain McArdle was talking to him over there on the bank of the river.

Q. Have you any reason to doubt the accuracy of any portion of this report?

A. I have not. I think it is accurate; it is correct. The thing is so long ago I couldn't remember all of those details. I don't propose to recollect all those things.

Q. No, of course, I understand very well you can't recollect it all, but do you recollect that, in substance, was the statement as it appears in this paper, as made by Valle on the night in question?

A. Pretty nearly that, sir.

Q. Did you interview any of the employees of the railway company, either on that night or on any other night?

A. I believe I spoke to Mr. Trainor that night. Mr. Trainor had formerly worked for the Boylan agency. I think Captain McArdle was with me at the time I talked with him, and I told him to come to the office the next day.

190 Q. Do you recollect when you got to Westwego of telephoning to Captain Barrett of the harbor precinct requesting him to send some tugs to Westwego?

A. No, sir; I didn't telephone him over there; I telephoned before I started over there, knowing the situation, that there wasn't any fire department only down in the city of Gretna—I don't believe there is any up there; I never knew of any. The moment I left home and as soon as I got down there to the landing, knowing the situa-

tion, I telephoned to Captain Barrett who was at the harbor to notify the tugs that generally were around Canal street, that there was a fire up there, and possibly they could render some assistance. That's before I started up at all. I telephoned to the fire department and asked for the loan of some hose. That was from Westwego. After I got over there, some one running around there, some of the employees, said they thought they might save some of the cotton that was on the docks, but that the hose they had on the tugs wouldn't reach to the wharf, but that if they had some more hose that possibly they could save some of the cotton, and I telephoned. I ain't positive now whether it was the chief's office or to Assistant Chief Donovan that I spoke to, and they sent it up to the head of Walnut street.

Q. There was no extra hose at Westwego, was there?

A. There was hose on the wharf before the fire, but I don't know whether there was any extra hose, and I expect a good deal of it had been burned up. You see, we take those things on ourselves, in our business, in order to protect the property under our care, and so I telephoned Captain Barrett, knowing the situation as I did. We don't wait to be asked to do this, but we do it ourselves, in order to try and save property for the insurance companies or for the owners of the property.

Q. You got there before Captain McArdle?

A. No, sir; I think he and I got there together, to the best of my recollection. We met at the Walnut Street ferry. I am
191 almost positive of meeting him there, but it's so long ago I can't remember all the details. And there I met Superintendent Pearsall, Agent Miller and Officers Campbell, Webber and Peters; those three officers were the three men we had over there in the day, and I thought it was advisable to take them back with us, as we might need them through the sheds during the excitement watching the railroad property. When I was going across, the fire was already burning. The fire was burning before I left my house, and I was then living at 1711 Dryades street. I was going across in a skiff; I went over with Mr. Pearsall, Mr. Miller and a representative of the Times-Democrat and the Picayune. And when I got over at Westwego I found some tugs there; they were pumping on the fire, and one of them I think was towing a steamer away from there. The railroad company had no tug that I am aware of. They could have had and I might not know it, but I never heard of their having any tug, any more than their transfer boats. At this time, and at the time of this fire and for some time previously, there had been considerable excitement in New Orleans owing to labor troubles. These labor troubles were troubles between the white and colored screwmen.

Q. Did you have any part in the selection of the men who were detailed to go over to Westwego either for day or night duty for any of the days prior to November 12th, or for November 12th, 1894? I mean in picking out the particular men.

A. We generally left that to our captain to pick them out, and if he picked out anybody we thought didn't suit, we just told him not

to send him either to Westwego or any place. I mean by our captain—Captain McArdle. He generally attended to this part of it and selected the men, and if he sent a man we thought wouldn't suit, we just told him to change him and put a better man there.

Q. You had no personal part in the selection of those men?

A. Possibly I did. I don't recollect that I had. I know
192 Officers Peake, Robeau and Schoen personally. I can't say that I selected any one of them to go over there. I knew they were over there. They couldn't be there without me being told of it by the captain.

Q. You learned that from what somebody else told you?

A. Possibly so, or possibly I may have told the captain to send those particular men there. Sometimes I picked out the men. I have no positive recollection on that point.

Q. How many men did you have in your employment, I mean extra men, on November 12, 1894?

A. I couldn't say that without looking at the rolls. We had a very large number, but I would have to refer to the record. I haven't got that in my mind. I recollect a change in these watchmen on November 12th. I think it was on November 12th that Mr. Miller's representative over there rang up our office and asked for me, said one of the men was smoking under the wharf over there, and I sent a man over to relieve him immediately, sir. The wharf was down on the ground from where he was, some distance, and nobody could reach the wharf from there. That's a rule that we make, that any man put to guard cotton and found smoking is immediately dismissed; that's a rule Colonel Boylan has always established. Joseph Loebsfein was the name of the man who was dismissed.

Defendant's counsel reads from the deposition as follows:

Direct examination by Mr. CLEVELAND:

Q. On learning that there was no hose there you telephoned to either the chief or the assistant chief of the fire department?

A. I didn't learn there wasn't any hose there; that was a mistake. I was informed by somebody that the tugs claimed they would like to get some hose over the docks, claiming if they had some hose over to the tugs that would reach the wharf from the tugs out in the river they could save some of the cotton. I did not make
193 any inquiry as to whether there was any such hose there or not, because it was useless to make any inquiries as the wharf was all on fire; and if there was any hose there it would be burned up, or couldn't be got at, sir.

Cross-examination by Mr. TAGGART:

Q. Mr. O'Connor, what time did you first hear of that fire?

A. I disremember now who rang me up, but somebody rang me up and told me Westwego was on fire. It was somewhere along between 6.15 and 6.30. I lived about sixty-six blocks from the Westwego ferry. To get to the river I walked right straight out

Felicity road, the distance being about seven squares, and took the car; then rode out to the front, to the ferry. I don't think there was an electric car then; I think it was a mule car at that time.

Q. And at the ferry you found the gentlemen whom you have named?

A. They were either ahead of me or got there just before we secured the skiff. I could see Westwego from there.

Q. What was the condition of the place?

A. Everything was ablaze; and I got a skiff and went over as soon as I could.

Q. Could anybody work on the dock at that time when you got there?

A. Well, possibly on a portion of it they might have, but I don't think so, sir; so much of the cotton on fire and the heat was so great it would keep anybody from getting on the shed.

Q. Prior to November 12 you were familiar with the situation of affairs at Westwego, were you?

A. Well, I had been over there several times that fall.

Q. And were familiar with the requirements as to guarding cotton on the wharf, were you?

A. Yes, sir.

Q. Did you consult with Captain McArdle as to the number of men to go over there from time to time?

194 A. That was arranged in this way. We consulted with the railroad company. Captain McArdle consulted with Mr. Miller in regard to the matter, but if he found there was more freight than the men over there could guard, it was his duty, the duty of Captain McArdle to call Mr. Miller's attention to it.

Q. And he would put more men on?

A. Yes, sir.

Q. And when he would thus put more men on you would be notified?

A. Be notified.

Q. Your understanding was, was it not, prior to November 12, that there were a sufficient number of men there to guard those wharves as wharves are generally guarded, in your experience?

A. Yes, sir; I don't think we had any occasion to call Mr. Miller's attention to anything. I think around the election, on the 6th, that I called his attention during the excitement there that possibly it would be advisable to put on an extra man or two around the night of the election and the night after the election. That I won't be positive of, but I think so; however, the time-list would show that.

Plaintiffs' counsel reads from the deposition as follows:

Redirect examination by Mr. CLEVELAND:

I won't be positive; when I was at Westwego last, prior to November 12, 1894; it may have been a week or ten days before that. There was a small fire that called me over there in the daytime, a couple of bales of cotton on fire. I went over on the next morning.

It was the morning after these two bales of cotton were on fire. Between that time and November 12th I don't think I had been there. I did not know on November 12th how much cotton was there, or its value.

Q. Now, let me understand you. Did you consult at all with Mr. Miller as to how many men you should put on?

A. Well, Captain McArdle consulted with him as to that.

Q. How lately had you seen Mr. Miller about the number of men that should be furnished?

195 A. I suppose possibly I may have seen Mr. Miller every day for a week, and then I might not see Mr. Miller for possibly two or three weeks. On that particular point I have no recollection.

Q. You have no recollection of ever consulting him as to how many men should be placed at Westwego?

A. When we first put them up there, yes, sir. Mr. Miller, if I recollect right, came to the office and had a talk about the number of men. I forgot when we put them there, whether it was in the winter of '93 when we began, or the fall of '92. I think it was '93, but I won't be positive on that point. I would have to have our records to refresh my memory about it. It was long prior to this fire.

Q. And in relation to this increase of force you had nothing to do with that?

A. I had that much to do with it that the captain reported to me, and if it wasn't right we would go and see Mr. Miller; but I don't think the occasion ever came when he reported there wasn't a sufficient number of men. I know nothing whatever of any conferences between Mr. McArdle and Mr. Miller.

Q. You had nothing, personally, to do with saying how many men should go over there, had you?

A. Well, it was Captain McArdle's duty to report to me how many men he thought was necessary, and if there wasn't enough then I would instruct him to go to Mr. Miller and notify him of that fact; that's what I had to do with it.

Q. Do you recollect ever having any conversation with the captain as to how many men you should send to Westwego?

A. I suppose we have had dozens of conversations about it, sir; not only about Westwego, but about all places.

Q. Now, you had on November 7th five men at night on watch at Westwego, according to Captain Boylan's testimony. Who did you consult with as to decreasing the number, if any one? I don't want you to give me general statements, hearsay evidence,

196 but tell me of your own knowledge, if you have any knowledge on the subject.

A. I haven't that knowledge.

Q. On the 6th of November you had five men watching at night at Westwego, and on November 8th you reduced that number to three. What do you know about that reduction?

A. As I told you a moment ago, November 6th was election night, and I think it was on my advice that Mr. Miller increased the force,

if I haven't mistaken about the date. The force was increased for two nights, the night of the election and the night after.

Q. And reduced then also by your advice?

A. Well, the orders were given, to the best of my recollection, to increase the number for two nights only, during the election excitement. Those orders came from Mr. Miller. I think I advised Mr. Miller, to the best of my recollection. And he told me to put on two extra men. I told him I thought that would be necessary. I do not know positively how long those sheds were. I did not know on November 10th or 11th how much cotton there was there. I couldn't tell whether they were piled full or not. I don't know how much cotton was in there at any time. I don't know how many cars were generally left on the track at night. I don't know how many cars were ever on the track at night.

Q. Do you know of Mr. McArdle's ever going over there?

A. I think he did. I never went with him, except the night of the fire that I recollect of.

Q. Then, unless you met him over there, you never knew him to be there before, did you?

A. Not of my own knowledge. That's the only time he and I were ever there together. Of course, I wasn't over there a great many times myself; that was a kind of an out-of-the-way place to get at.

Cross-examination by Mr. TAGGART:

Q. Mr. O'Connor, how long were you over there when you went there after this fire that you speak of?

A. I suppose three-quarters of an hour, sir, or half an hour.

197 Q. And did you look at the wharf there?

A. From end to end.

Q. And the facilities for extinguishing fire that were there; did you observe those barrels, buckets and hose and everything that was there?

A. Yes, sir.

Q. And was there, in your judgment, a necessity as to changing the number of men there who were on watch at that time?

A. No, sir; there was not.

Q. Was Mr. Miller there at that time?

A. I think I met Mr. Miller over there, either as I was going off the wharf or coming. I ain't positive. Westwego didn't appear to be different from other places. In fact, it was to be preferred to some, because it was isolated, and you see on cotton on the wharves through the city where there are public thoroughfares and people coming and going all the time it's hard work to prevent people from smoking, but over there nobody was supposed to have any business on the wharf, and they had no business there. Those were the instructions of our men, to keep people off.

Redirect examination by Mr. CLEVELAND:

I didn't go over there at that time for the purpose of examining the fire apparatus.

Q. You never looked at that fire apparatus on that dock in your life, did you?

A. Yes, sir. When we first took charge over there I went and looked at the barrels and looked at the hose. I never examined to see if it was good or bad hose, but I saw the hose stretched out and saw water in the water barrels.

Q. You saw the hose stretched on what?

A. Hanging from the posts.

Q. Stretched or hanging?

A. When I seen them, to the best of my recollection, they were on the side of the posts.

Q. How much hose did you notice?

A. That I couldn't say.

Q. How long was the hose?

A. I couldn't say.

198 Q. How many hydrants or plugs?

A. I couldn't say.

Q. How many pipes under the wharf?

A. I don't know that I saw any under the wharf, because I wasn't under the wharf.

Q. Were there any under the wharf?

A. I couldn't say.

Q. Were there any on the wharf?

A. Hydrants?

Q. Yes.

A. I couldn't say.

Q. Were there any pipes on the wharf?

A. Yes, sir.

Q. Were there any plugs on the wharf?

A. I couldn't say.

Q. You know the size of the pipe there?

A. No, sir.

Q. You know the size of any plug there?

A. No, sir.

Q. Know the size of any hose?

A. No, sir.

Q. You know how many plugs there were?

A. No.

Q. Or how many pipes there were?

A. No, sir.

Q. How many barrels there were?

A. I didn't count the barrels.

Q. Or buckets?

A. No, sir.

Q. Did you ever see any chemical fire-extinguishers?

A. Don't recollect seeing any.

Q. You know how the pipes over there were fed?
A. No, sir.
Q. Did you ever inquire to find out how the pipe was fed?
A. No, sir; did not.
Q. Did you know how many watchmen the railroad company employed during these labor troubles?
A. No, sir; I did not.
Q. Either night or day?
A. You mean of the Boylan men?
Q. Yes; and of any other men?
A. I understood they had this man Valle at night and another man in the daytime.
Q. How old a man was Valle, in your judgment?
A. I couldn't tell you, sir. As I told you, I only seen him at night; in fact, I had forgotten all about seeing Valle.
199 Q. Did you know that Westwego was without police protection except such as was furnished by the Boylan people?
A. Well, we always understood that the parish of Jefferson had police of its own.
Q. How near to Westwego?
A. Well, I expect they were pretty nearly down to Gretna all the time.
Q. How near to Westwego was the nearest policeman, in your judgment?
A. Well, in my judgment, it's pretty hard to get one. There are some over there, but they have a good deal of territory to cover.
Q. You know whether Westwego had any fire protection from the parish of Jefferson?
A. Never heard of their having any, sir, outside of the town of Gretna. I don't know whether there is an engine at Harvey's canal or not, but I don't think there is.

JAMES P. MCARDLE, called as a witness for plaintiffs, testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

I am captain of Boylan's police force, and have been almost 17 years here in New Orleans.
Q. Look at the paper which I now show you and state if that report was made by you.
A. This is a typewritten report from my report. It is the substance of the report I made.
Q. Where is the original of the report?
A. I haven't seen it since I made it. I handed it in to our agency at the time and don't know what became of it. By our agency I mean Col. Boylan's agency. I don't know where the original is. That leaves my possession after I make it. I make the report to our agency and those reports are kept on file as a rule for a while, and then they are destroyed.

Q. You don't mean to say that the original of that report is destroyed?

A. It may be there and may not. All I know is I can't tell.

200 Q. It is uncertain, Captain?

A. Yes, sir; but that's my report. It is a copy of my report.

Q. This report states, Captain McArdle, that at 6.35 on last evening—the report being dated November 13th—Corporal J. A. Boyle came to your house and notified you there was a fire at Westwego. Do you recollect that circumstance?

Mr. TAGGART: We object to that.

The COURT: I sustain the objection. That is wholly innocuous, but it is introducing a part of the report.

Q. What did you then do?

A. Upon being notified by Corporal Boyle that there was a fire at Westwego, I went to what we call our Jackson Street station on the levee at the head of Jackson street and telephoned to Superintendent O'Connor, and told him there was a fire at Westwego. He told me to notify the steamship agents of the ships that were up there about the fire, and I tried to do so and notified everybody I could reach; and as soon as I got through with that, to meet him at the Walnut Street ferry—that is the ferry that runs to Westwego from this side of the river. I got up there as quickly as I possibly could after attending to this and up there met the superintendent, met Mr. Miller and Mr. Pearsall, gentlemen connected with the Texas and Pacific Railway Company, and met our day officers on duty that day over at Westwego. The place was pretty well burned up. I could see that from this side of the river—all a mass of smouldering ruins. The superintendent procured a skiff and Mr. Pearsall, Mr. Miller, the superintendent, and myself and two representatives, one from the Times-Democrat and one from the Picayune, rowed over there at once. When we got there they were trying to save the conveyor of the elevator. The sheds had been destroyed and the wharves and dock, and they were trying to save the elevator and succeeded in doing so. I, of course, inquired around to find out if our

201 men knew anything of the fire, and got statements from which I made up this report.

Q. This report—will it serve to refresh your recollection as to what those different parties stated to you?

A. Yes, sir.

Q. Do you recollect whether Officer Robeau was one of the persons who had been sent over to Westwego by the Boylan agency to engage in the duty of watching?

A. Yes, sir.

Q. Did you see him at Westwego on the night of November 12th?

A. Yes, sir.

Q. When did you last visit Westwego before this date, Captain McArdle?

A. Well, I was not in the habit of visiting Westwego. I don't

think I was over there twice before that, altogether. Each time I went there I went there to see the captains of vessels that were lying there. That was what brought me to Westwego. It was an out-of-the-way place, and I didn't go there, except on special occasions. I could not give you the date when I was last over there before November 12th. I think it must have been within a month or two of that time. Yes, it was a month or a month and a half before this time. I stayed there on that occasion with the captain, in his company, about half an hour, and then came immediately back.

Q. How long before that visit to see the captain of the Clandeboye had you been there?

A. Well, I wouldn't be certain that I had been there before then; but I think I had been over there when another ship was lying at the wharf—but the name of the ship I have no recollection of. I cannot tell you the time I was there then. I do not recall anything that I did on this occasion when I went to see the captain of the Clandeboye, except to go to see him. I went to see him about something in regard to our watchmen watching the ship. I never made a detailed inspection of the fire apparatus that was on that wharf. I do not know anything about it, except what I saw occasionally as I passed through the sheds on my way to the ships.

202 Q. Do you recollect anything at all about it?

A. Well, I remember, if my memory is right, that at the posts, that is, fronting the river side there was a barrel of water and a bucket suspended from the barrel; and on the posts there, I believe I saw hose strung along underneath the shed.

Q. How was it stretched, Captain?

A. Stretched, if I remember right—now, I think they had a bat-on nailed on the post; that is, the one toward the front—and the hose was stretched there, from post to post.

Q. Well, was that the proper way to have it done?

A. It was the usual custom, yes, sir.

Q. That is the usual way to have it done?

A. Yes, sir.

Q. In that way—stretched along?

A. Yes, sir.

Q. So that when the water was turned on the nozzle would be easily accessible. Is that what you mean?

A. Yes, sir.

Q. Do you recollect anything else concerning this fire apparatus except the stretching of this hose?

A. No, sir.

Q. You know how many lengths of hose there were in any shed?

A. I couldn't say.

Q. Or how many hydrants?

A. I don't know.

Q. Or where the hydrants were situated?

A. No, sir.

Q. Or the size of the hose?

A. No, sir.

Q. Or the length of any length of hose?
A. No, sir.
Q. You know the size of the pipe that fed the hose?
A. No.
Q. Or how the hose was fed?
A. No, sir.
Q. Or how the pipe was fed?
A. Couldn't say.
Q. Captain, what part did you take in designating the men who would go over there, I mean those of your agency?
A. Well, the men all reported to me. The night men all reported to me every afternoon and I selected the detail of men for that place. I was the active man in charge of Boylan's Detective
203 Agency at this time on the river front. Captain O'Connor was the general superintendent at the agency, and issued orders to all the officers under him—to myself, for instance. For instance, if four or five men are to be sent to Westwego, he would order me to send that number of men there, and I would make the detail. I had no part in saying how many men should go to Westwego. I generally selected the men that would go. I selected these men to go over there who were on duty at this time—Robeau, Schoen and Peake. I told them what to do; they always had their instructions from me.
Q. Now, what did you tell Schoen to do?
A. Schoen's duties were to watch underneath that wharf and see that no person got under there; that no boats were to be allowed there; to see that nobody would go under there but himself.
Q. Why did you give these instructions?
A. I had orders from Mr. C. G. Miller, freight agent of the Texas and Pacific railroad. They were given to me personally by Mr. Miller; all matters of this kind are given to me.
Q. When?
A. Some time about a week or so before the fire; a week or ten days before the fire I detailed a man under that wharf. He told me to do that.
Q. Did he tell you how many men?
A. On one occasion, when there was an election, the night of the election, we had three men, if I recollect right, underneath the wharf. That was by his orders. And then after that the force was decreased. And that was by his orders. The object of watching underneath that wharf was an extra precaution.
Q. Do you recollect that at this time and for some time previous to November 12th there were labor riots here in New Orleans?
A. There were labor troubles; a strike going on. Up to that time there had been one large fire. I recollect an occurrence that took place on or about October 26th, in New Orleans, concerning the boarding of vessels by masked men. On that night—I don't
204 remember whether that was the exact night or not, but the occasion I remember there was a lot of men, supposed to be cotton screwmen, laborers in cotton, who boarded ships up there and threw the tools belonging to the colored screwmen into the river.

And then I recollect that shortly afterwards there was a large fire in New Orleans at the West India dock. The date of that was November 4th, 1894.

Q. Do you recollect that there was, after that, a conflagration on a ship here?

A. On a ship?

Q. You recollect the Hagee?

A. That was no conflagration; it was a fire in about two bales of cotton in the ship's hold.

Q. At this time is it a fact within your knowledge that the railroad and transportation companies had increased the number of men on watch at night?

A. Don't know anything about that, sir.

Q. How many extra men did the Boylan Company have in its employment between October 15th and November 13th?

A. How many? I couldn't say. At that time we had a very busy season, a large lot of property to be watched, and our force was increased accordingly.

Q. Was it increased on account of these labor troubles?

A. Not specially for that reason, but on account of the accumulation of freight we had to have extra watchmen.

Q. You mean to say that you did not increase the number of men that you furnished to your various customers on account of the labor troubles?

A. Only in one or two instances. I believe we increased the force of Elder, Dempster & Co. and Chas. Stoddard & Co.

Q. Any railroads?

A. No, sir.

Q. You recollect your furnishing an extra force of men to the Southern Pacific?

A. That didn't come under my jurisdiction, but I know I furnished a lot of men to the Southern Pacific.

Q. And the Northeastern also?

A. No; I don't think they increased the force to the North-
205 eastern, but I don't remember now whether they did or not.

Q. You say this Westwego was an out-of-the-way place; was it at that time within the port of New Orleans?

A. No, sir.

Q. Was it within the city of New Orleans?

A. No, sir; it ain't yet; outside of the city limits.

Q. Did you understand whether it had any independent fire protection from any city or town authorities?

A. I don't know anything about that.

Q. Did it have any police protection, to your knowledge?

A. Not to say to my knowledge, sir.

Q. Well, to your knowledge, did it have any fire protection?

A. I can't say that, because I never made an inspection of the place.

Q. Do you know how many watchmen the Texas and Pacific had at Westwego outside of your own?

A. No, sir.

Q. The fire companies in New Orleans never cross over the river, do they?

A. No, sir; never go outside of their limits. The number of men that were furnished to the Texas and Pacific from time to time prior to November 12th were under the orders of Mr. Miller. Those orders were generally given to me; as a rule, given to me personally. Then I increased or diminished the force according as Mr. Miller told me. I do not know the length of the dock at Westwego or the length of the sheds. I do not know the value of the property or anything concerning the value of the property that was at Westwego on November 12th. I don't know what is the length or what are the dimensions of any of these sheds. I don't know how the cotton was piled.

Q. You don't know whether it was piled or headed?

A. It was tiered.

Q. That you learned. You didn't know that?

A. No, sir.

Q. You don't know anything about the gangways that were left there?

A. No, I don't know.

206 Q. And you don't know what number of men the Texas Pacific had on watch, in addition to your own?

A. No, I couldn't say, sir.

Q. How old a person was Valle, in your judgment?

A. Well, I haven't seen the man for some time, but I took him to be a man between thirty and thirty-five years of age. He's a man about five feet two in height, slim built, dark complexion, dark mustache; what we call here a Cadian, a country creole, French descent. He is of French extraction, but a person raised in the country. I don't know what experience he had had in watching. He never told me.

Q. As I understand it, Captain, you don't know how this place was protected against fire except that you sent three officers over there?

A. Yes, sir; with instructions what to do. With that exception, I don't know anything at all as to its protection against fire.

Defendant's counsel reads from the deposition as follows:

Cross-examination by Mr. TAGGART:

Q. How far, Captain, within the port of New Orleans on the river did you have charge of the Boylan watchmen?

A. I had charge of all the men that worked on the river front, from one end of the city to the other.

Q. Within the two outside limits—Chalmette, Southport, Westwego, and all that?

A. Yes, sir; both sides of the river were under my jurisdiction. Whenever there is a request for watchmen at any place, from any source, it comes to me and I detail the men.

Q. The number of men is determined elsewhere?
A. Yes, sir.
Q. Now, you say that Mr. Miller determined the number of men—that is, you got information from him of the number of men you were to detail over there?
A. Yes, sir.
207 Q. Do you know whether or not, before you got that information from Mr. Miller, he had had any conference with Superintendent O'Connor or Colonel Boylan about the matter?
A. Really, I don't know what his conferences were with those gentlemen at all.
Q. When Mr. Miller spoke to you about men, is it not a fact also that he would get your advice as to the men that would be necessary?
A. Yes, sir; he would always consult me. There never was any disagreement between us as to the amount.
Q. You and he would agree as to the number of men, and then you would detail that number of men?
A. Yes, sir.
Q. These men who were sent over there were selected by you as competent watchmen, were they?
A. Yes, sir.
Q. You had been there and over this wharf, had you not?
A. I had been, I believe, twice over there.
Q. Now, these officers whom you sent there reported to you, did they not, as to what they found out over there as to the water buckets, and as to the valves, and as to the hose, and as to the chemical apparatus for extinguishing fire?
A. Yes, sir.
Q. You said, in your direct examination, when you were over there that you observed barrels of water. They were placed, were they not, on the front of that wharf and not the rear of that wharf, at every upright post?
A. I didn't go over the whole wharf, but where I went along on the front (and my business took me to the front) I saw on the front part of every post these buckets.
Q. At every post?
A. Yes, sir.
Q. And each filled with water when you were there?
A. Yes, sir.
Q. And one bucket or two buckets to the barrel?
A. I don't think I remember all that. There may have been two, but there were buckets, or a bucket, at each post, and there were barrels there.
Q. Do you remember this, that these pails were hanging by the barrels, ready to be lifted out, filled with water?
A. Yes, sir.
208 Q. And also that the posts had hanging something resembling a bucket, with a chemical fire-extinguisher?
A. The Worcester, or whatever you call them; chemical pails.
Q. The hydrants you didn't count?

A. Don't know anything about them.

Q. But you saw some on the wharf?

A. Saw some hose there.

Q. Saw some hose there that was connected with the pipes and barrels?

A. Well, that—I didn't look as to that.

Q. Do you remember during the time that you were detailing men at Westwego, your officers reported the condition, not only of the valves and the chemical apparatus, but also of the hose and hydrants?

A. They made reports, but my recollection now, in regard to the number of barrels or the number of hydrants, is dim.

Q. Wasn't it a part of your instructions to these men to report to you as a part of the information they were to report, whether or not these barrels were kept filled with water?

A. Had instructions to that effect.

Q. You say, Captain, this was not within the port, of New Orleans. What do you mean by that?

A. Well, the port of New Orleans (I designate what I consider the port of New Orleans, although the customs port is a different thing). At that time, I don't believe Westwego was embraced in the customs district of New Orleans, in the revenue port. Congress stipulates what shall be the port of New Orleans for the purpose of revenue.

Q. And that is what you mean by saying that it was not within the city of New Orleans?

A. It was not within the limits of the city of New Orleans.

Q. It was a regular loading place for vessels, was it not?

A. Yes, sir.

Q. Now, you were inquired of as to the exposure at Westwego. There are no houses near Westwego, are there?

A. No, sir.

Q. No population near there?

209 A. No, sir; that is, what I call "near." You mean, immediately adjoining?

Q. Yes; not within a quarter or half a mile?

A. Oh, yes, sir; the Westwego wharf was situated over the water, away from the levee embankment; and most of the property situated over there was on the inside of the embankment, away from the wharf.

Q. The nearest house was a quarter of a mile?

A. No, sir; I suppose about a distance of —. I think there is a bar-room right across the levee from there. That is at least two or three hundred feet away from the sheds. Across in the woods. It is a single house surrounded with a growth of trees. I have never been inside of it, but I always understood it was used as a dwelling-house. Then the nearest other houses are down near the canal, a little company store or a canal store, where the boat lands, and that comprises maybe half a dozen cabins. That is almost a quarter of a mile away. It is not in the line of travel from or to any place, except wagons going up and down, from one plantation to another. And they would be behind the embankment.

Plaintiffs' counsel reads from the deposition as follows:

Redirect examination by Mr. CLEVELAND:

Q. You saw chemical pails on each post?
A. Yes, sir.
Q. Do you recollect that, Captain McArdle?
A. Yes, sir; I remember seeing the chemical pails or buckets.
Q. Did you examine the buckets?
A. No, sir.
Q. How did you know they were chemical buckets?
A. From appearances.
Q. How many did you see?
A. I don't know.
Q. Will you say there was one?
A. Yes, sir.
210 Q. Will you say you saw a single chemical bucket anywhere at Westwego?
A. If I remember right; I couldn't positively swear on that point.
Q. That is what you are here for, Captain, to swear to what you say. Do you understand it that way?
A. I couldn't swear positively about that, but I think I did; I ain't sure.
Q. And how many did you see?
A. I don't remember that, sir.
Q. Will you swear you saw one?
A. I don't remember; I won't swear positively to that.
Q. Will you swear you saw two?
A. No, sir.
Q. Did you count them?
A. No, sir.
Q. Was it any part of your business, at that time, to look into them?
A. No, sir.
Q. Then will you state, Captain McArdle, that there was, at any time, or that you saw at any time one single chemical bucket at Westwego?
A. I think I saw them when I was passing up and down the wharf.
Q. Your attention was not called to the fire apparatus, you have stated that, Captain. Did you see any boxes on the posts?
A. No, sir.
Q. You said you saw, on your cross-examination, a barrel at every post. Did you mean that?
A. I know it.
Q. At every post?
A. Yes, sir; that I passed by.
Q. How many barrels did you see there?
A. I didn't count them; I don't know.
Q. Did you see one?
A. I saw every one.

Q. How many will you swear you saw? Did you see two? Will you swear you saw two?
A. I wouldn't swear to any particular number.
Q. But you say you would swear you saw some there?
A. Yes, sir.
Q. But how many you don't know?
A. I couldn't say.
C. Well, did you see one?
A. Yes, sir.
Q. Well, did you see three?
A. Yes, sir.
Q. Four?
A. Yes, sir.
Q. Five?
A. Yes, sir.
Q. Well, how many?
A. I can't say, sir.
211 Q. You can't say?
A. I don't know how many posts were at Westwego, so I can't say.
Q. And you say they were at every post?
A. At every post I passed by I saw a bucket.
Q. How many posts did you pass by?
A. I don't remember the number.
Q. Five?
A. Yes, sir.
Q. Ten?
A. Yes, sir; more than that.
Q. Twenty?
A. Yes, sir.
Q. Well, did you see twenty buckets?
A. Yes, sir; if I saw twenty posts I saw twenty buckets. I don't know how many posts I saw.
Q. But you remember positively there was a barrel at every post?
A. Yes, sir.
Q. Did you go and examine them carefully?
A. I passed close to them; yes, sir.
Q. You passed close by twenty barrels?
A. Yes, sir.
Q. And saw that each one was full?
A. Had water in them.
Q. How much water?
A. I don't know, sir.
Q. Full?
A. Not brimfull.
Q. Did you notice whether there were any buckets in there?
A. In barrels? No, sir; I didn't notice.
Q. Or near there?
A. At the posts there were buckets.
Q. There was a bucket hanging to the post?
A. Yes, sir.

Q. Chemical buckets?
A. Water pails.
Q. How many?
A. At each post.
Q. How high up on the post?
A. They were hanging not very high; about within reach of a man standing up.
Q. So a man would have to reach up with his hand to get a bucket about that high?
A. Yes, sir.
Q. Were the buckets on a nail?
A. I think it was hanging on a baton, if I remember right.
Q. How near this lot of hose which was stretched on the posts were these buckets?
A. I think the line of hose was stretched along inside of
212 these posts, if I remember right, sir. I remember seeing some hose there.
Q. And then the buckets were on the outside?
A. On the outside; yes, sir.

CHARLES E. SATTERLEE, called as a witness for plaintiffs, testified as follows:

Direct examination by Mr. CLEVELAND:

I am secretary and treasurer of the Texas and Pacific Railway Company. I have been secretary since 1895 and treasurer since 1882. I recollect the time of the fire at Westwego on November 12, 1894.

Q. What investigation was made of the source or origin of that fire by the railway company?
A. It was in charge—all that property was in charge of our general manager and I presume he took all the means of investigating the loss. Our general manager was L. S. Thorne. His office is in Dallas, Texas.
Q. Did he make any report on the subject?
A. Except by telegram and letter; that is all; no formal, lengthy report.
Q. Was there no report made to the directors of the defendant in relation to this fire?
A. It was announced by our president to the board, informally. I don't discover any record.
The COURT: Mr. Cleveland means a written report.
The WITNESS: No, sir; not that I know of.
Q. Nothing in writing at all, whether you call it a report, or by any other name?
A. To our board of directors?
Q. Yes.
A. No. The annual report, I think, the published annual report to the stockholders——
Q. Before we get to that—was there no report made to the directors by anybody concerning this fire?

A. Not in writing.
Q. Either as to its extent or origin, or any other feature of it?
A. Not in writing.

Q. Was there any letter written by anybody to either the
213 directors or to yourself concerning the fire?

A. Yes, sir; to me. That letter was written by L. S. Thorne.
Q. Please produce it.
A. And telegrams as well. The first letter—which had been preceded by a telegram—is dated November 11, 1894.
The COURT: That is before the fire?
The WITNESS: That is before the fire.
Mr. CLEVELAND: Let us take the first telegram. Probably the telegram came before the letter.
The COURT: Telegram with regard to the fire?
Mr. CLEVELAND: Yes, telegram with regard to the fire.
The WITNESS: This is it (producing papers).
Q. Is that whole batch in relation to the fire?
A. Yes, sir.
Q. Is it arranged in order of date?
A. Yes, sir.
Q. What is the first one there?
A. October 15, 1894.
The COURT: He has handed you those that relate to the fire, arranged in chronological order I understand. Is that so?
The WITNESS: Yes, sir.
The COURT: He has some prior to the time.
The WITNESS: The subpœna required me to produce everything prior to the fire and in the immediate vicinity of it. Mr. Thorne is now somewhere in Texas.
Q. This is the very first report that you received?
A. That is dated the date of the fire. It is the very first telegram received on the subject of the fire.
Q. It is the very first communication, the first notice you had of it, is it?
A. The first one I find on file. I believe it is the first.

Telegram marked for identification Exhibit N.

Q. What is the next document that you have?
A. November 14th (producing a paper).

214 By the COURT:

Q. Is that a telegram?
A. Yes, sir.

Telegram marked for identification Exhibit O.

By Mr. CLEVELAND:

Q. Now the next communication, telegram or letter, whichever comes in order of time?
A. I produce one dated the 13th.

Telegram marked for identification Exhibit P.
Witness produces a telegram dated November 16, 1894.
Telegram marked for identification Exhibit Q.

This is from me. I went down there. I left the city of New York to go down to New Orleans, on the 12th or 13th; on the 13th I think; right after receiving that telegram of the fire. I reached there in about two days and a half. This telegram is November 16, 1894, addressed by me to Mr. Gould, president of the road.

Q. When you got down there did you make any investigation, or direct any investigation to be made of the origin of the fire?

A. No, sir; I don't know as I did. I had charge of the insurance on the property, and hence I wished to go down and adjust, as far as possible, the loss being a very heavy one.

Q. You mean the insurance on the cotton as well as the insurance on the dock?

A. Yes, sir; the insurance on the whole property, from one end to the other. I have charge of that; have had for many years.

Q. What insurance did the company have upon the cotton?

Objected to as immaterial. Objection sustained. Exception by plaintiffs.

215 Q. Is it not a fact that the Texas and Pacific Railway Company had a common carrier's liability insurance upon all the cotton upon that dock?

Same objection, ruling and exception.

Q. Did the Texas and Pacific Railway Company have insurance upon any of this cotton against common carrier's liability?

Same objection, ruling and exception.

Q. When you went there did you see Col. Boylan?

A. I have no recollection of meeting him. I may have been introduced to him possibly, not on business, however. I don't know Mr. McArdle, his employee, at all. I don't know Captain O'Connor at all.

Q. Did you learn that Captain Boylan had ever sent to the railway company any report concerning the fire?

A. No.

Q. Do I understand you to say that you did not learn that fact, that Captain Boylan had made a report?

A. I don't know it for a fact at all. I don't know as I ever heard that he had. I have been subpœnaed to produce the reports that we received from our employees concerning the fire. I am producing them now.

Q. No, the reports of the employees, the detectives?

A. That would not come to me; that would not be in my possession.

Q. But they came to the road, didn't they? I am not addressing you on the stand as a person, but as an officer of the road, now. I am examining you as secretary and treasurer.

A. I understand that perfectly. The secretary and treasurer has

not the custody of such papers as you describe. I never saw any report, or any paper purporting to be a report of anybody who was employed on the dock that night, November 12, 1894, concerning the fire to my recollection. I never made any inquiries for any such paper to my recollection.

216 By the COURT:

Q. He means since you have received the subpœna have you made inquiry around for the papers?

A. No, sir. I have done nothing. I should not have the authority to order such papers sent to me. The president would have authority.

Q. Then you have done absolutely nothing in an attempt to produce the papers mentioned in the subpœna?

A. I have produced everything in my possession—everything in my office.

Q. You construed your authority as not extending to a request to the general manager to send up any papers to you?

A. I might request it. I could not order it. It would be merely a favor on his part. I did not venture so far as to request it. I have not communicated with him on that subject.

Q. Why have you not made an attempt to obey the subpœna?

A. The duties of a railway officer are limited; my powers are limited; and they do not go beyond their instructions, or the limits of their powers. They simply would subject themselves to a refusal, or ask as a favor to have a thing sent; that is all. I never made any request of Mr. Gould to allow me to stretch my authority so far as to request Mr. Thorne, if he had such a paper, to kindly mail it. I never read any report whatever made, or purporting to be made, or any copy of any report made, or purporting to be made, by Colonel Boylan, or by any officer of his, concerning this fire. I have no recollection of reading such a report. I understood when I got down to New Orleans that Colonel Boylan had been employed to protect this property.

Q. Employed by the defendant?

A. Employed by Colonel Wheelock, our general agent. Wheelock was general agent at that time at New Orleans.

Q. What was done in relation to the accumulation of cotton in October? I don't mean conversations, but I mean in writing, what was done, if anything, to your knowledge?

A. Nothing to my knowledge.

217 By the COURT:

Q. You don't know of your own personal knowledge that anything was done about it?

A. No, sir.

By Mr. CLEVELAND:

Q. Didn't you send a letter?

A. Yes, I wrote several.

Q. Now, let me have your first letter.

A. There is the first one (producing a paper).
Q. This is the first?
A. That is a copy of it.
Q. This is the first?
A. Yes, sir; in October.

Mr. CLEVELAND: I will offer this in evidence.

By Mr. TAGGART:

Q. This is not your letter, is it?
A. It is a copy.

Mr. CLEVELAND: We will get the letter-press copy, so as to get one step farther back. A copy of a letter-press copy might be objectionable.

The witness produces his letter-press copy book.

By Mr. CLEVELAND:

Q. You have been subpœnaed to produce all the original letters and correspondence, have you not?
A. Yes, sir.
Q. And you have not done so?
A. I have done so.
Q. You have produced copies, I understand you. You call this the original?
A. Yes.
Q. This book, which I will have marked for identification, is a book of the railway company, the letter-press copy book, kept in the ordinary run of business?
A. My book.
Q. And this is a letter-press copy of the letter which you wrote, at page 196?
A. Yes, sir.

Plaintiffs' counsel offers in evidence the letter-press copy of the letter referred to, at page 196.
Marked Exhibit R (printed *post*, at p. 289).

218 Q. Please let me have the reply that you received to this letter of October 15th.

The witness produces a paper.

Q. Is this it?
A. That is it, I believe.

Plaintiffs' counsel offers in evidence the letter referred to, dated October 19, 1894, from Mr. Thorne to Mr. Satterlee.
Marked Exhibit S (printed *post*, at p. 290).

Q. When did you next address Mr. Thorne on the subject of the accumulation of cotton at Westwego? Shall I hand you your letter book?
A. It was in response to a telegram. The next letter I find is that (producing a paper).

By the COURT:

Q. What is the date?
A. October 23d.

By Mr. CLEVELAND:

Q. No telegrams?
A. I have a telegram here from Mr. Thorne.
Q. Suppose we have that, if it precedes in date.
A. October 21st (producing a telegram).

Plaintiffs' counsel offers the telegram in evidence.
Marked Exhibit T (printed *post*, at p. 291).

The WITNESS: On the 20th was a letter.

Plaintiffs' counsel offers in evidence the letter dated October 20th from Thorne to Satterlee.
Marked Exhibit U (printed *post*, at p. 292).

Mr. Thorne was general manager.
Q. Now the next one.
A. I have my letter to Thorne (producing a paper) in reference to accumulation; and I have his telegram here. That is the
219 telegram (producing a telegram). The telegram comes first.

Plaintiffs' counsel offers in evidence a telegram dated November 6, 1894, from Mr. Thorne to Mr. Satterlee.
Marked Exhibit V (printed *post*, at p. 293).

Q. You wrote on the 9th in reply to that. I have the copy here, but I would like to see the whole letter. You have only given me a copy of a part?
A. It is there (indicating in the letter-press book).

Plaintiffs' counsel offers in evidence letter dated November 9th, referred to.
Marked Exhibit W (printed *post*, at p. 293).

Q. Anything else between that and the 12th?
A. November 10th.

Mr. CLEVELAND: I will offer this telegram of November 10th from Mr. Satterlee to Mr. Thorne.
Marked Exhibit X (printed *post*, at p. 295).

Q. Did you get his reply?
A. That was what date?
Q. The 10th?
A. No, sir. That is from Thorne to me, November 10th (producing a telegram). Another one of November 10th; both bearing on the same subject.

The two telegrams referred to are offered in evidence by plaintiffs' counsel and marked Exhibits Y and Z (printed *post*, pp. 295 *et seq.*).

Q. Now, the next one?
A. A letter of November 11th (producing a paper).

Plaintiffs' counsel offers the letter in evidence.
Marked Exhibit A A (printed *post*, at pp. 297 *et seq.*).

220 THOMAS N. BOYLAN, recalled as a witness for plaintiffs testified as follows (his testimony being read from a deposition previously taken in the cause):

Direct examination by Mr. CLEVELAND:

Q. That correspondence that we referred to, Colonel Boylan, have you that here?

A. Yes, sir.

Q. Show me, if you please, the first letter which you wrote to the Texas and Pacific Railway Company in September, 1894.

A. There are no letters in relation to Westwego in September, 1894.

Q. Give me now the date of your first letter in October, 1894, to the Texas and Pacific Railway Company?

A. New Orleans, October 11, 1894.

Q. Now, I want the letter which you received from the Texas and Pacific Railway Company next prior to October 11, 1894?

A. I produce it.

Q. Now give me the letter received which is nearest the date of October the 7th, 1894?

A. I produce that also; here it is.

Q. The paper you now produce, dated October 29th, is a letter which you received from the Texas and Pacific Railway Company about this date?

A. Yes, sir.

The letter referred to, dated October 29, 1894, marked for identification "Plaintiffs' Exhibit No. 5," is as follows:

"NEW ORLEANS, LA., *October* 29, 1894.

"Mr. T. N. Boylan, principal Boylan's detective agency, city.

"DEAR SIR: Your communication of the 24th inst. in connection with the two bales of cotton marked 'G. O. L. D.,' being slightly damaged by fire at Westwego on October 23d, has been referred to Mr. A. L. Wilkinson, chief clerk, at Westwego wharves. From Mr. Wilkinson's reply I quote the following:

221 "'I would also state that when the fire was discovered Officer Campbell, according to his own statement, was not even in the shed, and stated to me that he had asked another officer to take care of his watch. This officer was stationed in shed No. 2. I sent for Officer Campbell immediately upon discovering the fire, and it was some little time before he arrived on the scene.'

"Have to ask that you afford full advice as regards the foregoing: also as to what steps, if any, have been taken to guard against a recurrence.

"Yours truly, C. G. MILLER,
"*Freight Agent.*"

The foregoing letter is marked Plaintiffs' Exhibit B B.

Q. Now, did you reply to that letter?

A. My reply is as follows:

"NEW ORLEANS, *October* 31, 1894.

"C. G. Miller, Esq., freight agent, T. & P. railroad, city.

"DEAR SIR: Referring to your favor of the 29th instant, in relation to Officer Campbell's report, would state that strict orders have been issued that officer will not leave cotton temporarily without first notifying your representative at Westwego. In reference to fire reports, I will see that nothing concerning your employés appear in same.

"Yours truly, THOS. N. BOYLAN, *Principal.*"

The foregoing letter is marked Plaintiffs' Exhibit C C.

Q. Will you produce, if you please, the communication of yours of the 24th instant to Mr. Miller, to which his letter of October 29th was an answer?

A. I do so, and it is as follows:

222 "NEW ORLEANS, *October* 24, 94.

"C. G. Miller, Esq., freight agent T. & P. R., city.

"DEAR SIR: Herewith please find report, dated October 23rd, 1894:

"Captain James P. McArdle reports: Officer T. M. Campbell, who is on duty at Westwego for account of the T. & P. R. R., in No. 1 shed, reports that at 4.15 p. m., two bales cotton at post 2, in shed No. 1, were discovered to be on fire by Thomas Roach and John Casey, two longshoremen, who were working there loading the British steamship British Crown. Officer Campbell was coming from the closet when the colored boy employed as a messenger in the office called to him, and he and Mr. Wilkinson, superintendent of the T. & P. R. R., and some longshoremen extinguished the fire. About twelve bales had to be removed from off that burning bale before they could throw water on them. The two bales are marked G. O. L. D., and are slightly scorched. No person had been working near the cotton that caught on fire for about a week. It had evidently been burning about half an hour before it was discovered, but no smell of fire was detected. They were at the bottom of the tier of one hundred bales, and caught on fire near the buckles. The cotton was for the Elder, Dempster line. The men who discovered the fire reside, John Casey, at the corner of Jackson and Rousseau streets, and Thomas Roach, corner of Third and Tchoupitoulas. Officer Campbell is of the opinion that the origin of the fire is incendiary. Mr. Wilkinson, superintendent of the T. & P. at Westwego, is disliked by the colored laborers employed there, on account of the way in which he swears at them whenever he tells them to do anything. On Sunday, October 21, 1894, while he was waiting for a car at the corner of Walnut and Magazine streets at 6.30 p. m., one of the T. & P. R. R. checkers asked a negro why he did

223 not go to work that day and he said he would not go with that man (Mr. Wilkinson), as he had no use for a negro and

wanted him to work twelve hours for ten. The officer thinks that some person having a grudge against Mr. Wilkinson must have tried to set the cotton on fire.

"Yours truly,

——— ———,

"*Principal*—A."

The foregoing letter is marked Plaintiffs' Exhibit D D.

Q. Now, give me your letter next in date to October 29th, received from the Texas and Pacific R. R. Co. (The witness produces one.)

A. I have no letters at all, received from the T. and P. between October 24 and November 21, 1894.

Q. Please let me see any letters. I am not asking for reports, but letters, which you or any one in your office wrote to the T. and P. between October 29, 1894, and November 13, 1894.

A. I find one, dated November 14, 1894, which is as follows:

"NEW ORLEANS, *November* 14, 1894.

C. G. Miller, Esq., freight agent T. & P. R. R., city.

DEAR SIR: Officer E. Peake who was on night duty at Westwego states that last Friday night Mr. Wilkinson, the chief clerk, fired a shot at a dog. This occurred just outside the office, and in the line of his fire were two rows of cotton, but that the office was on one side and some trucks on the other side of where he stood.

Yours truly, THOS. N. BOYLAN, *Principal*."

The foregoing letter is marked Plaintiffs' Exhibit E E.

Friday would be the ninth.

224 P. A. ROBEAU, called as a witness for plaintiffs, testified as follows:

Direct examination by Mr. CLEVELAND:

Q. Where do you reside?

A. New Orleans, sir.

Q. How long have you lived in New Orleans?

A. In 1873 I went to New Orleans.

Q. What were you doing in November, 1894?

A. I was on the Boylan force.

Q. Thomas N. Boylan's detective agency in New Orleans, you mean?

A. Yes, sir.

Q. And were you at Westwego on the night of November 12, 1894?

A. Yes, sir.

Q. How long prior to that day had you been at Westwego?

A. About 18 days.

Q. Were you a day watchman or a night watchman?

A. I was a night watchman. Excuse my accent, because I have no teeth in my mouth.

Q. Who were on duty with you as night watchmen, if anybody, on the night of the fire of November 12, 1894?

A. Peake, Schoen, Tony Valle and I.

Q. Who was Valle?

A. Private watchman for the T. & P. line.

Q. How old was Valle, do you think, at that time?

A. To my knowledge, about 19 years old. I never asked him his age.

Q. How long had you three been at that dock—you and Schoen and Peake? How long had you been night watchman before the fire? You say about 18 days?

A. Not Schoen. Schoen started, I think, the 6th of November.

Q. How many night watchmen were there there on the night of the 6th; do you recollect?

A. Yes, I think so; three on the wharf and three under the wharf.

Q. How many were there on the next night, the 7th?

A. The same; the same amount.

Q. And on the next night, the 8th?

A. We were only one under the wharf and three on top.

Q. And did that continue until the night of the 12th, the same?

A. Until the 12th.

225 Q. Then from the 8th until the 12th there were two Boylan men on the dock at night, and Valle——

A. And a private.

Q. One underneath?

A. Yes, sir.

Q. What was your beat at night?

A. Shed No. 2.

Q. That is the shed up the river?

A. Up the river.

Q. The office shed is the one below—No. 1?

A. Yes, sir.

Q. Now, I want you to state to the jury just what happened on the night of November 12th, from the time you left New Orleans until the time of the fire. State it in your own way.

A. The time I left New Orleans, or when I crossed the river? I can't tell exactly the time I left.

Q. During that time state what occurred.

A. We came to the ferry, to the Westwego ferry, between 5 and 6 o'clock, and we crossed the river. Then we went to the telephone, and I telephoned that everything was all right.

Q. Where did you telephone to?

A. Telephoned to the main office.

Q. Did you yourself telephone or somebody else?

A. I don't remember. I used to telephone and the others used to telephone, but that night I don't remember.

Q. Now go on and state what occurred.

A. After we had done telephoning, and saw everything was all right, we came to the office—I mean to the office of the shed No. 1—to take my lamp, and I went to my beat, and I met the one that

was there and I said "How is it?" He told me "All right." I took off my coat and put my lamp away. Then I came to make my rounds as usual, to see if everything was right, where my key was. About five or six minutes I was standing there, or seven minutes; I can't tell exactly. I saw the private watchman pass. In about a minute or two I heard "Fire! Fire!"

226 By the COURT:

Q. You heard the cry of fire?

A. The crying of "Fire! Fire!" I run to the woods side to see if I could see anybody, but I could not see anybody, and then I run to the river side, and then I run to the fire, and I passed through the shed to go to the woods side and I saw Valle with the hose in his hand, and he says, "Go down and open the valve."

By Mr. CLEVELAND:

Q. What did you do?

A. I went to open the valve. I could only go sideways. I couldn't hardly stand; and I found the valve wide open. Then I came back and tried to help Mr. Valle with the hose in his hand. Everything was in flames. I couldn't do anything. I tried all my might to have the water, but we could not have any water. The hose was too heavy; we couldn't do anything at all; and he says to me, "Robeau, go down and untangle the hose." I says, "I won't go down where the flame is." I kept up; that is the only thing I could do I went to the other end of my beat, and took my coat and run away.

Q. Where did you first see the light of the flame that night?

A. I was about 70 feet from the light.

Q. When you saw Valle did you first see the light of the flame?

A. I saw Valle first.

Q. When you heard "Fire! Fire!" did you recognize whose voice it was?

A. Yes, sir.

Q. Whose was it?

A. Valle's voice.

Q. And when you first saw Valle where was he?

A. On top of the cotton.

Q. Whereabouts?

A. About 12 or 15 feet high on top of the cotton.

By the COURT:

Q. Whereabouts on the wharf?

A. At the woods side.

227 By Mr. CLEVELAND:

Q. You were on the woods side?

A. Yes, sir.

Q. Where was Valle?

A. He was on the cotton.

Q. Whereabouts, with relation to the centre of the shed?

A. The fire?
Q. No; where was Valle?
A. He was about the centre of the shed, but the upper end; because the fire was about 70 or 75 feet below the upper end.
Q. When you first saw Valle what was he doing?
A. He had the hose in his hand.
Q. What was he doing with it?
A. He couldn't do nothing. When I went down there he told me to go down and open the valve; and so I went, and it was wide open.
Q. When you were down there trying this faucet, and found that it was wide open, did you see any water coming out?
A. No, not a drop. We couldn't have any water.
Q. You did not see any water when you were opening the valve?
A. Yes; I saw the pouring.
Q. Leaking, you mean?
A. Yes.
Q. When you clambered up with Valle and he had the hose in his hand, what part of the hose did he have in his hand?
A. The pipe.
Q. Was there any water coming out?
A. No, sir.
Q. What was he doing when you got up on that pile of cotton?
A. Tried to have water, but he couldn't have none.
Q. Was Valle on the hose?
A. Yes, and I was too; but everything was in flames; we couldn't do nothing at all.
Q. You say he said to you, "Go down and untangle that hose"?
A. Yes, sir.
Q. How do you mean go down? Where was the hose?
A. The hose was pretty near where the fire was, against the post.
Q. Against the post?
A. Yes, sir.
Q. Was it on the platform?
A. On the floor.
Q. On the floor of the platform?
A. Yes.
228 Q. On the posts? How high up from the floor of the dock?
A. The hose?
Q. Yes.
A. The hose was about six feet high.
Q. What did you do when you got up with Valle?
A. Tried to pull out the hose to have the water to extinguish the fire, but we could not. Everything was in flames.
Q. When did you first see the flames that night? Before you got up to Valle?
A. When I got on top I saw the flames.
Q. How many bales of cotton were on fire then, as you recollect it?

A. About three or four bales.
Q. No water came out of the hose?
A. No, sir.
Q. How long were you there pulling that hose, trying to untangle it?
A. Maybe two or three seconds, because we tried the best we could.
Q. Did you see any barrels of water near that place?
A. No, sir.
Q. Or any buckets?
A. No, sir.
Q. Or any fire-extinguishers?
A. No, sir.
Q. Did anybody ever tell you that there was any chemical fire-extinguishers on that dock?
A. No, sir.
Q. Did anybody ever instruct you in their use?
A. No, sir.
Q. Describe to the jury this fire? Where was it? Was it on the top of the cotton or at the bottom?
A. At the bottom of the floor.
Q. How near did you come to the flames that night, when you were nearest to them?
A. About fifteen paces.
Q. In your judgment, if you had had a sufficient stream of water——
A. We could easy put it out.
Q. Wait. In your judgment, if the water had come out of the hose that night—a full stream of water—such as the hose was able to carry, could you have extinguished the flames?
A. Yes, sir; myself alone.
Q. Your beat, you said, was No. 2 shed?
A. Yes, sir.
Q. Where was Valle's regular beat?
A. In the centre.
229 Q. Between the sheds?
A. Yes, between the two sheds.
Q. Where was Peake's beat?
A. No. 1.
Q. Was there any other employee of the railway company, except the Boylan men, at that dock at any night you were there, except Valle?
A. Yes, sir.
Q. Who? Anybody except Valle?
A. Nobody.
Q. Valle was there alone?
A. Yes; nobody.

Cross-examination by Mr. TAGGART:

Q. You had been working there about 18 days, had you?
A. About that. I can't tell exactly.

Q. And your beat was No. 2 shed, was it?
A. Yes, sir.
Q. That is, you walked around a certain time from one part of this shed to another?
A. I had to make my rounds. I had a clock to punch every hour and a half, from half past seven to half past seven.
Q. You indicated on the clock that you had made the round?
A. Yes, sir. I had the key free.
Q. At the different places?
A. Yes, sir; all around.
Q. Had you never seen any barrels on the outside of that dock along the posts in front?
A. Outside?
Q. Yes.
A. Yes.
Q. There were barrels there?
A. Yes.
Q. At each post there was a barrel?
A. Not each post.
Q. At most of the posts there was a barrel, wasn't there, and filled with water?
A. Yes, water in it.
Q. That was part of your business, to look after and report that those barrels were full, was it not?
A. Nobody told me to report.
Q. You never looked to see if those barrels were full?
A. I looked all the time. If they were not full I filled them up myself.
Q. And on the woods side, on the outside, where the posts were, there were barrels there?
A. Yes, sir.
230 Q. And buckets?
A. Yes, sir.
Q. You were asked if there were fire-extinguishers. There were buckets hanging on these posts at different places?
A. I didn't see none.
Q. You didn't see any?
A. No.
Q. Do you say you never noticed them?
A. No, sir; I never seen one.
Q. There were gangways, were there not, running across this No. 2 shed from the river side to the woods?
A. Yes, about four or five.
Q. And did you walk through those?
A. Every night; that was my duty.
Q. That was part of the beat that you were required to make?
A. Yes, sir.
Q. And as you went through there you indicated on this clock at different places?
A. The clocks were all around my shed; the four corners and one in the centre. We had five keys.

Q. Five keys that you would get as you would go around?
A. Yes, sir; and sometimes before I make my punch with my key I make the round.
Q. Where did you start to make that round?
A. The lower end of the beat.
Q. And which way—up the river?
A. Up the river and then down.
Q. Did you and Valle go together?
A. No, he hadn't anything to do with that. He had the centre beat.
Q. You would go clear around the wharf?
A. Yes.
Q. And had you gone clear around that evening after you went on duty?
A. Yes, that is the first thing I do.
Q. Had you got clear around?
A. Yes, to see if everything was all right.
Q. That is, you got there at 6 o'clock, did you, and started on your round?
A. That I don't know, if I came right at 6 o'clock, but as soon as we come there we would take our places.
Q. Where were you on the wharf when you first heard this cry of fire?
A. I was about 30 feet under the shed, at the lower end.
231 Q. Towards No. 1 shed?
A. Yes.
Q. On the river side?
A. On the river side.
Q. That is out near the tug that was there?
A. About 30 or 40 feet. I can't say exactly.
Q. Were you under the shed?
A. Under the shed.
Q. Which way did you go when you heard the cry of fire?
A. My idea first was to go to the woods side to see if I could see anybody.
Q. Were you at a gangway?
A. Yes, sir.
Q. You went through that gangway then to the woods side?
A. Yes, sir.
Q. And you saw nothing?
A. I saw nothing. Then I run to the river side.
Q. Did you come back through the same gangway?
A. No, sir.
Q. You went up along the woods then?
A. I went to the upper end of my beat after I heard the noise "Fire! Fire!"
Q. Did you go clear up to the upper end?
A. Yes, sir.
Q. And you did not see any fire up there?
A. No.
Q. Then where did you go?

A. I went to the woods again. I went through the gangway, and I saw Valle.

Q. This hose he had in his hand, you say, did you?

A. He had what?

Q. He had the hose pipe in his hand, did he?

A. Yes, he had the pipe in his hand.

Q. How far was the hydrant from where he was?

A. About 10 feet; but where he was he could not see the hydrant.

Q. He could not see the hydrant?

A. He was on top of the cotton. He could not see me when I went down neither.

Q. What did you do when you went there?

A. I went there and I saw the valve was wide open.

Q. The what?

A. The valve of the pipe.

Q. And was there water in the hose?

A. Kind of water; yes, in the hose.

232 Q. It had pushed out in the hose, had it?

A. Yes, swelled up.

Q. How far had it pushed out and swelled up in the hose?

A. I didn't look. As soon as I saw it open I went to Valle to help him.

Q. What did you do to help him?

A. We tried to pull the hose free, and we couldn't do anything.

Q. The pressure of water had kinked the hose?

A. Yes, the hose was so tangled that we couldn't do anything. At the same time the blaze was going; and Valle says to me, "Go down and have it untangled." And I said, "No, I won't go, go yourself if you want to."

Q. And you run away then, did you?

A. Yes, I did. I tried to save my skin.

Q. This cotton was blazing?

A. Yes, very high.

Q. Blazing right up?

A. Yes.

Q. Blazing way up?

A. Yes.

Q. How high was it blazing when you got there?

A. About 6 feet from the floor—about.

Q. How high was the pile of cotton?

A. The cotton was piled about 15 feet high.

Q. Was it blazing along the side of that pile of cotton?

A. Yes, spread out.

Q. Spread out along the ends of the bales, was it?

A. Yes.

Q. Where was this kink in the hose—down below Valle?

A. Where the platform was?

Q. Yes.

A. About 6 feet under.

Q. You say the valve, when you tried it, was wide open?

A. Yes, sir.

Q. How far out in this hose had the water pushed out from the pipe?

A. I don't know that.

Q. Did you take hold of the hose to see?

A. With all my might, all the strength I had.

Q. And the pressure of water was so heavy that you could not straighten it out?

A. We couldn't budge it.

Q. Do you know who opened that valve?

A. I don't know.

Q. Do you know how high the fire was when that valve was opened?

A. Yes.

233 Q. How high was it when the valve was opened—when it was first opened?

The COURT: He found it open.

The WITNESS: I found it open when I got there.

Q. You don't know who opened it?

A. No, I don't know who opened it.

Q. How long were you there with Valle when you discovered this fire?

A. I never took my watch for that. I did the best I could.

Q. About how long were you there?

A. Maybe two or three seconds; I don't know.

Q. And then where did you go?

A. I went upstair- to help him.

Q. You went up on the cotton?

A. On the cotton.

Q. How long were you there with him?

A. Maybe one or two seconds.

Q. Then where did you go?

A. I said I tried to save myself.

Q. In saving yourself, where did you go?

A. I went to the lower end of my beat and took my overcoat and ran away. I didn't stay any more.

Q. Where did you run to?

A. To the office.

Q. How long did you stay at the office?

A. That is a mighty hard thing to say. I can say about half an hour.

Q. How long was it before that fire was all over in No. 2 shed?

A. How long did the fire last?

Q. No; how long was it before the fire was spread all over the No. 2 shed?

A. About ten minutes.

Q. And about two seconds after you got there you had to run away on account of the fire, didn't you?

A. Yes.

Q. Do you know where that fire started?

A. Right in the centre of the shed; I mean up the shed, about 40 or 50 feet this side.

Q. About 40 or 50 feet south of the upper end of No. 2 shed?

A. I can't say exactly. About 70 feet, maybe. I don't know.

Q. About that far from the upper end of No. 2 shed?

A. Yes, sir.

234 Q. And in the centre of the shed, wasn't it?

A. Yes, sir.

Q. And near the bottom of a pile of cotton, wasn't it?

A. What?

Q. Was it near the bottom of the pile that it was burning?

A. At the floor, I told you, where it started.

Q. Was there a whole pile of cotton on fire?

A. When I got there I saw the light of the fire.

Q. Where did you see the light from? Where were you when you saw the light of the fire?

A. Didn't I tell you that?

Q. No, you have not.

A. Didn't I tell you I was about 70 feet from the light of the fire?

Q. Was it in a gangway that the fire was?

A. Yes, sir.

Q. Were you at the end of the gangway when you saw the light?

A. I was on the platform outside.

Q. And did you see the light down the gangway?

A. Yes, sir.

Q. How much of a fire was there then, when you saw that?

A. I couldn't tell you.

Q. You did not see the fire?

A. Yes; when I came to climb up on the cotton, Valle says to me: "Go down and open the valve."

Q. I didn't ask that. I asked how much of a fire there was?

A. I don't know.

Q. You did not see the fire?

A. I saw the light of the fire.

Q. How much light was there; was it a big light?

A. How much light was there?

Q. Yes; how much light did you see?

A. I can't say exactly how much light I saw.

Q. Did you see it over the piles of cotton?

A. No, sir; we couldn't see it.

Q. You could not see it over the piles of cotton?

A. Because I passed there, about 15 paces from the places in the gangway.

Q. When?

A. To come to Valle.

Q. And you did not see it in the other gangway, then, did you?

A. No, of course not.

235 Q. You say this blaze was about 6 feet high when you got there?

A. 6 or 7 feet high, yes.

Q. And how many bales of cotton was it covering?

A. I don't know. I saw the light of the fire.
Q. I know, but when you got there?

The COURT: When you got there to Valle?

A. Three or four bales.
Q. Had it burned the covering off the bales?
A. They were spread out.
Q. How wide was the fire; how wide was the blaze?
A. About 15 or 20 feet I should say.
Q. Was it on the end of a solid bale of cotton? Was the pile of cotton solid there that it was burning against? Do you understand that?
A. What do you mean?
Q. Was this cotton piled?
A. Yes, like that.
Q. And was it burning 15 feet high?
A. Yes, spreading.
Q. Spreading rapidly?
A. Yes.
Q. How long was it from the time you heard Valle cry "fire" until you got to Valle?
A. Maybe half a minute. I don't believe it was.

Redirect examination by Mr. CLEVELAND:

Q. You said you did not see any fire buckets. Did you see buckets with water in them?
A. Around the fire?
Q. Around outside.
A. They had buckets, yes, outside.
Q. Buckets with water in them, outside the shed?
A. Yes.
Q. On the posts outside?
A. Yes.
Q. But you did not see any fire bucket- to know them as fire buckets? You did not know that there were any fire buckets there?
A. What do you mean?
Q. I mean chemical.
A. No, sir; no, sir; no, sir. I didn't see none.
Q. No, chemical?
A. No, I never seen none.
236 Q. Mr. Taggart has asked you if the pressure of *of* water in the hose made it so heavy that you could not pull it out?
A. I couldn't pull it and I know I am a strong man.
Q. Listen to my question. When you were pulling with Valle on the hose why didn't it come up? What was the matter with it?
A. It was so badly tangled.
Q. Was there any water in it down on the platform? Did it appear full down on the platform?
A. Yes, down on the platform. You mean on the plank?

Q. At the plank?
A. Yes.
Q. But when you got up and were pulling with Valle, was the hose that was below you, 5 or 6 feet below, where it was tangled up—was it full of water?
A. I didn't look at that.
Q. You were pulling?
A. I was pulling with all my might.
Q. No water came out of the nozzle?
A. No, sir.
Q. Tell me about these gangways. Just describe to the jury the gangways that were through No. 2 shed. What kind of gangways were they?
A. They had some about 4 feet wide and some about 2 feet wide and some about 3 feet wide.
Q. How about the cotton; how was it piled up?
A. Every which way; some flat down; some headed up.
Q. How high was it piled in any place; how many tiers high?
A. About 12 or 15 feet high.
Q. And this place that you were standing, how high was that, where you were standing with Valle?
A. About 12 feet, more or less. I never measured.

(Plaintiffs rest.)

Mr. TAGGART: I move the court to direct a verdict for the defendant upon the grounds, first, that there has been no negligence proved here on the part of the defendant; and second, on the ground that there has been no connection shown between
237 any alleged negligence and the loss by fire. Upon those grounds I insist that we are entitled to the direction of a verdict in our favor.

The COURT: I will deny the motion, with leave to renew it at the close of the whole case.

Mr. TAGGART: As at present advised, your honor, we will not put in any testimony, and we renew our motion.

The COURT: You now rest and renew your motion.

*Direction of a Verdict.*

The COURT: In the case on trial I have gone through the testimony over night, and the cases cited, have given the matter careful attention and thought, and have reached the conclusion that the motion should be granted. In one respect only (namely certain testimony brought out by the witness Robeau) is the situation at all changed, or is there anything in addition to what was before the court in the Reiss case. The liability of the railroad company can be established only upon the showing that their negligent action brought about the disaster by which the plaintiffs' cotton was destroyed. The burden of proof is upon the plaintiff; but of course it is to be taken into consideration that his testimony has to be sought from employees and from persons connected, in one way or

other, with the defendant, in part at least; and that while the burden remains upon him, slight testimony may be sufficient—should properly be sufficient to send the case to the jury for the drawing of proper inferences from the facts proved. Nevertheless it remains that, under the theory of the law, the burden is upon him and he must show that whatever negligence the testimony might warrant the jury in inferring, was in some way connected with the catastrophe. It is in that particular that the great bulk of the testimony of the plaintiff fails to accomplish its result. For instance, it may very well be argued—this is a repetition of what I held in the
238 Reiss case; the court of appeals seems to have passed no comment upon it—that the circumstance of a locomotive being allowed to run upon the track, among this cotton, by the end of the wharf, might perhaps be sufficient to send the case to the jury, under ordinary circumstances, to determine whether that was negligence, in view of the peculiarities of cotton and its liability to become ignited, if there were anything to show that this fire was at all connected with the movement of that engine. But it appears that the engine was at one end of the dock and this fire was in the middle of the shed. So too, the suggestion about labor troubles in New Orleans, and possible criminal action on the part of dissatisfied longshoremen might be sufficient, if there were anything to connect this fire with them. There might be circumstances sufficient to connect the fire with the troubles; for instance, if it broke out in half a dozen places at once; or if at the time people were observed from the dock to be running into the woods or escaping from the water front of the dock, or something of that sort; but there is nothing of that sort here; the fire broke out in a single place, and there is nothing at all to indicate or fairly to warrant the inference that it was brought about as a consequence of arson on the part of some riotous individual. Then again there was a great quantity of cotton, an extraordinary amount. It might be insisted strongly that the plaintiff should be entitled to go to the jury on the ground that there was such a very large quantity of cotton, and no increase in the force of watchmen if it further appeared that as matter of fact the fire was not discovered until it had spread to such an extent as to make it almost hopeless to overcome it by the appliances at hand, there might be sufficient to send it to the jury to say whether the amount of watchmen was properly proportioned to the amount of territory and merchandise that they had to watch; but, on the contrary, the evidence here shows that this fire was most promptly discovered. Robeau hears the cry of fire. After that he runs
239 from where he is, just inside the shed, 30 feet perhaps from the end of it, runs to the woods side—that is, towards the shore end of the dock, and looks out in that direction, and he runs along the dock on the woods side; then he runs along and looks at the water front and then runs to where Valle is. All that takes some time. At the time he reaches Valle he finds that it is only the front of three or four bales that was ablaze. Undoubtedly at the time Valle gave his alarm of fire there was very much less than the quantity of fire that was there when Robeau got there. No

other inference is possible. Therefore it appears that, however, great was the quantity of cotton, and, however, few the number of watchmen, it nevertheless happened that this particular fire, arising we know not how, was discovered with great promptness; so that I do not see that we are entitled to say that there is a sufficient connection made between the mere circumstances that there was a great quantity of cotton and a small number of watchmen and the catastrophe of the fire, to warrant the plaintiff going to the jury. Now, in regard to stacking cotton: it appears that it was stacked so that there were a number of gangways running through, and it is asserted that the gangways were narrow, from three to four feet perhaps, in width; and there is some testimony here about the difficulty of carrying a plank through the gangway and getting it out at the end—having to lift it over the bales of cotton. I do not quite understand the bearing and force of that testimony. It might be difficult to get a thirty-foot plank out of a four-foot alley anywhere when turning a corner with it, or even out of a six-foot alley. And it appears to have been stacked close to the hydrants. But be that as it may, there is no suggestion here in the testimony that the piling up of the cotton interfered in any way with the access to the hydrant to turn the water on; because it appears that even Robeau, a large and very stout man, had only the slight difficulty of a momentary compression of his bulk in pushing through to reach the valve of the hydrant and to turn it, if it were necessary; and he found it turned on when he got there. So as to all those parts of the case which were in evidence in the Reiss case I still remain of the opinion that the facts proved are not sufficient to send the case to the jury. There remains only the additional circumstance, which is in testimony from Robeau, that the valve having been turned on, the water did not come out of the nozzle of the hose; and the explanation which he himself gives is that the hose was kinked and tangled so that the water would not flow through from the valve to the nozzle. There is nothing upon which we can infer that there was anything the matter with the tank or the supply of water, or the valve or the hose itself, or even with the place where the hose was put; and there is nothing in the testimony here to show that to stack up the hose the way it was stacked, folding it back and forth on the platform, was negligence on the part of the persons so stowing the hose. There is no evidence to show that it was. For aught that appears here that was a perfectly proper mode of stowing it. As far as we can infer what may have produced the failure of the water to go through the hose, it is apparent that the hose was thrown down, either intentionally by Valle, to get at it better, or accidentally in scrambling up to his position on the cotton—was thrown down in a pile on the platform, whereupon instead of kicking the kinks or pulling the kinks out of the coils of hose that he had there so as to give an opportunity for an unobstructed flow of water, he turned the water on first and then undertook to pull the kinks out afterwards, expecting the water to force its way through. I do not think that single circumstance, assuming that that was the way it came about, is sufficient to hold

the company to the responsibility of negligence; and therefore I have reached the conclusion which I reached and expressed, in the Reiss case, and am prepared to grant the motion.

241 Mr. CLEVELAND: I will make my motions. I ask to go to the jury on the question of negligence. That motion is denied?

The COURT: Motion denied.

Exception.

Mr. CLEVELAND: In the first place, I should have asked your honor to charge this jury that on the uncontradicted facts there is a presumption of negligence, and therefore to direct a verdict for the plaintiffs on the testimony as it stands. That your honor denies?

The COURT: Yes.

Mr. CLEVELAND: I will take an exception. Also I now ask permission to go to the jury on the question of negligence.

Motion denied. Exception.

I now ask your honor to direct a verdict for the plaintiffs on the ground that, the bill of lading not mentioning Westwego, it was a deviation from the contract to take the cotton to Westwego, and the carrier has therefore forfeited the benefit of the exemption of loss by fire contained in the bill of lading.

Motion denied. Exception.

The bill of lading not mentioning Westwego, and Westwego not being in 1894 within the geographical limits of New Orleans, and within the limits of that port as defined in section 2568 of the Revised Statutes of the United States, or in that collection district of the United States, and not having been included within the port of New Orleans under the Statutes of the United States until 1896, taking the cotton to Westwego was such a deviation by the carrier as forfeited the benefit of the exemption of loss by fire.

Motion denied. Exception.

I now ask your honor to direct a verdict for the plaintiffs, on the ground that the bill of lading not mentioning Westwego, and Westwego not being in 1894 within the geographical limits of

242 New Orleans, or within the limits of that port as defined in section 2568 of the Revised Statutes of the United States, or in that collection district of the United States, and not having been included within the port of New Orleans under the Statutes of the United States until 1896, and, there being no proof that the shipper had any actual notice of the intention of the carrier to take the cotton to Westwego, and the defendant not having shown that Westwego was within the port of New Orleans by commercial custom of such long standing, or so general or so universal or so well established as to be fairly and reasonably within the constructive knowledge of the shippers, or fairly and reasonably to be entitled to be recognized as within the port of New Orleans, for such a shipment, namely, one hundred bales of cotton, as the one in question in this suit, the defendant has forfeited the exemption in the bill of lading in relation to fire.

Motion denied. Exception.

I ask your honor to allow me to go to the jury on the question of

whether Westwego was, within the terms of the bill of lading, such a place within the port of New Orleans as the cotton could be taken to and unloaded by the defendant, or was so well known by commercial custom of such long standing, or so general or so universal, as to be fairly within the constructive knowledge of the shippers.

Motion denied. Exception.

Mr. CLEVELAND: Of course, your honor gives me my exception in each case separately?

The COURT: Oh, yes.

Mr. CLEVELAND: I now ask your honor to direct a verdict for the plaintiffs upon the following grounds: It appearing by the uncontradicted testimony that if the defendant had a right to take the cotton there, Westwego was nothing but an open platform, with open sheds, consisting of posts and roof, and that it had three railway tracks alongside of it, upon one of which the locomotive was
243 accustomed to come, and did come upon the day of the fire, and was seen to be puffing up the dock at one o'clock, or about one o'clock, on the day of the fire; and that as Westwego had no police protection and no municipal fire protection, and no fire-engine, and that, owing to the inflammable nature of the cotton, and its exceptional situation, namely, a great accumulation of cotton, of over 20,000 bales, being there; and by reason of the contract made between the defendant and the connecting carrier, Elder-Dempster & Co., under which the defendant had no right to call upon the shipper to take the cotton; and by reason of the labor trouble existing at Westwego, and the amount at risk, it being proved by the letter of Satterlee, of October 15th, that he apprehended a great risk to his company by the destruction of his property through fire there; and that 4,000 bales at the West India dock had been burned, of a valuation of $150,000; and there being 28,000 bales at that dock valued, on the same valuation, at $1,050,000; that owing to that great accumulation of value there, and owing to the fact that the defendant had had notice of the danger of having such a large amount of cotton on the dock, irrespective of its known inflammable nature; there having been a fire on the dock, in the cotton, but a week or a few days prior to the fire; that the defendant had a notoriously drunken superintendent at the dock, namely, Wilkinson, the testimony being uncontradicted that he was drunk, or pretty well loaded, as one of the witnesses expressed it, by 11 o'clock in the morning; that a special report had been made of his disorderly conduct by firing at a dog; that the negroes who were working at the dock were inimical to him on account of the way he treated them; by reason of the fact that Boylan, O'Connor and McArdle testified—they being the only protection that the company afforded to this cotton, outside of the protection of Valle, which I will speak of in a few moments—neither
Boylan, O'Connor nor McArdle having the slightest idea of
244 the value of the cotton, or the amount of cotton that was accumulated there; and Mr. Boylan and Mr. McArdle swearing that they increased the guard over the cotton, as the cotton increased, whereas the fact shows they decreased the watchmen as the cotton increased in amount; and it being uncontradicted, by the testimony

of McArdle, that the hose should have been stretched, whereas it was piled on the platform so that it was in such a condition that two men could not pull it straight, in order to let the water come out, if it could come out; and it being uncontradicted that the only protection that was given to this company by the railroad company, independent of the protection afforded by the two detectives, Robeau and Peake, on top of the dock, and Schoen below the dock, was Valle, who was a young man not shown to have had any experience, a man of only 18 or 19 years of age; in view of those uncontradicted facts I ask your honor to direct that there is a presumption of negligence against this defendant, and to direct a verdict in our favor.

Motion denied. Exception.

Mr. CLEVELAND: Now, in order that there may be no question about it, I ask generally to go to the jury on the question of negligence.

The COURT: Generally on the whole case?

Mr. CLEVELAND: Generally on the whole case; yes.

Motion denied. Exception.

Mr. CLEVELAND: Then I claim, as I did in the Reiss case, that the defendant not being a party to this bill of lading cannot claim any relief from its common-law liability by reason of any provision in the bill of lading. Your honor recollects the form of the attestation clause?

The COURT: Yes.

Motion denied. Exception.

The COURT: The motion of the defendant is granted, with an exception to the plaintiffs.

The plaintiffs are allowed a stay of sixty days to make a case.

245 E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT A.

(See *ante*, p. 13.)

United States Circuit Court, Southern District of New York.

JOHN HENRY CLAYTON, NICHOLAS ROBERTS, and CHARLES Anderson Earle
*against*
THE TEXAS AND PACIFIC RAILWAY COMPANY.

DE FOUBLANQUE PENNEFATHER
*against*
THE TEXAS AND PACIFIC RAILWAY COMPANY.

ARTHUR BOWER FORWOOD, ERNEST HARRISON FORWOOD, and Harold Stanley Forwood
*against*
THE TEXAS AND PACIFIC RAILWAY COMPANY.

246 PHILIPP CORNELIUS HEINEKEN and JOHANNES VOGELSANG
*against*
THE TEXAS AND PACIFIC RAILWAY COMPANY,

and 39 other cases.

It is hereby stipulated between the parties hereto—

First. That the bills of lading which are marked R. T. and T. C., March 23rd, 1897, were, on the day of their respective dates, duly issued and delivered by the defendant to the shippers therein named, at the place therein stated as the place of dates.

Second. For the purposes of arriving at the value at the place of shipment, at the date of the bill of lading, of any of the cotton included in any of the forty-three (43) actions pending in this court against the Texas and Pacific Railway Company, arising out of the fire at Westwego on November 12, 1894.

The weight given on each of the bills of lading as the aggregate weight of all the bales of cotton therein stated to have been shipped, shall be divided by the number of bales of cotton therein stated to have been shipped, and the result shall be taken as the weight per bale. In case of a total loss of the cotton described in the original invoices, in possession of the plaintiffs' attorneys, the grades shall be taken to be as described in said invoices, and the value of said grades of cotton shall be determined as hereinafter set forth.

In case a portion only of the cotton in any invoice shall have been destroyed, and it is not possible to definitely identify
247 the particular bales of cotton destroyed, then the cotton destroyed shall be considered to be the lowest grade shown on the invoice on which such destroyed cotton appears.

The prices, per pound, of such grades shall be the New Orleans price current at the date of the bill of lading for such grades of cotton, less the amount of rail freight from shipping point to New Orleans, fixed and agreed for this purpose at seventy-five (75) cents

per hundred pounds, such New Orleans price current to be fixed by the secretary of the cotton exchange at New Orleans, or by the secretary of the cotton exchange at New York.

Third. That plaintiffs' attorneys shall furnish to defendant's attorneys copies of the invoices covering the four cases now on the calendar, on or before the 31st of March, and copies of invoices covering the remainder of the suits within a seasonable time thereafter, and at least four weeks before any of said cases shall be moved for trial.

Fourth. The trial of these cases shall be set for the second Monday of April, 1897, provided that the adjournment of the trial of the cases beyond the day when they are first called for trial shall not interfere with their trial on such second Monday of April, 1897.

Dated New Orleans, March 23rd, 1897.

EVARTS, CHOATE & BEAMAN,
*Plaintiffs' Attorneys.*

RUSH TAGGART,
*Attorney for Defendant.*

248 E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT B.

(See *ante*, p. 13.)

Copy.

20 Feb., '95.

Export bill of lading, approved by the permanent committee on uniform bill of lading, to take effect July 1, 1893.

26 Jan., '95. Form 206 Rev.

The Sherman, Shreveport & Southern Railway Co., and Texas & Pacific R'y, and Elder, Dempster & Co. S. S. line.
(Name of fast freight line or railroad.) (Steamship or steamship line.)

Export bill lading No. F 31.
Contract S. S. S. No. 49.
T. & P. No. 73.

Received at Greenville, Texas, from H. L. Edwards & Co., the following property, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below:

This space must be reserved for use of agents at the seaboard.

| | | |
|---|---|---|
| Through rate—gold—per..... | | £..... |
| Ship's proportion ..... | | £..... |
| Inland charges..... | £..... | ..... |
| Advance charges..... | £..... | £..... |
| Total ..... | | £..... |

Marks and numbers.

100 DIXO.
EDWARDS.
2440 2539.
22–318

249 *Articles.*

One hundred (100) bales of cotton.
Weight 54,063 (subject to correction).

To be carried to the port of New Orleans, La., and thence by Elder, Dempster & Co.'s S. S. line to the port of Havre, France (or so near thereto as ship may safely get, with liberty to call at any usual port of call), and to be there delivered unto order of H. L. Edwards & Co., or to their assigns (notify K. Siebert), or to another carrier on the route to destination, if beyond said port, upon payment immediately on discharge of the property, of the freight thereon, at the rate from Greenville, Texas, to Havre, France, of one hundred and seventeen (1.17) cents, United States gold currency, per one hundred pounds gross weight and advanced charges (8——), with all other charges and average, without any allowance of credit or discount; one pound sterling to be considered equal to $4.80 United States gold currency. Settlement, if in currency other than sterling, to be at current rates of valuation.

In consideration of the rate of freight herein named, it is hereby stipulated that the service to be performed hereunder shall be subject to the conditions, whether printed or written, herein contained, and said conditions are hereby agreed to by the shipper and by him accepted for himself and his assigns as just and reasonable.

*Attention of Shippers is Called to the Act of Congress of* 1851.

"Any person or persons shipping oil of vitriol, unslacked lime, inflammable matches or gunpowder, in a ship or vessel taking cargo for divers persons on freight without delivering at the time of shipment a note in writing, expressing the nature and character of such merchandise, to the master, mate, or officer or person in charge of the loading of the ship or vessel, shall forfeit to the United States one thousand dollars."

*Conditions.*

With respect to the service until delivery at the port of New Orleans, La., it is agreed that:

1. No carrier or party in possession of all or any of the property herein described, shall be liable for any loss thereof or damage thereto, by causes beyond its control; or by floods or by fire from any cause or wheresoever occurring; or by riots, quarantine,
250 strikes or stoppage of labor; or by leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet or decay; or from any cause if it be necessary or is usual to carry such property upon open cars.

2. No carrier is bound to carry said property by any particular train or vessel, or in time for any particular market, or otherwise than with as reasonable despatch as its general business will permit. Every carrier shall have the right, in case of necessity, to forward said property by any railroad or route between the point of shipment and the point to which the rate is given.

3. No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor after said property is ready for delivery to the next carrier or to consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. Claims for loss or damage must be made in writing to the agent at point of delivery promptly after arrival of the property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event.

4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be carried hereunder, shall have the privilege, at its own cost, of compressing the same for greater convenience in handling and forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. No carrier shall be liable for differences in weight or for shrinkage of any grain or seed carried in bulk.

5. Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination, may be kept in the car, depot or place of delivery of the carrier, at the sole risk of the owner of said property, and there held subject to lien for all freight and other charges. Property taken from a station at which there is no regular appointed agent, shall be entirely at risk of owner until loaded into cars; and when received from private or other sidings, shall be at owner's risk until the cars are attached to trains.

6. No carrier hereunder will carry, or be liable in any way for, any documents, specie or for any article of extraordinary value not specifically rated in the published classifications, unless a special agreement to do so, and a stipulated value of the articles, are indorsed hereon.

7. Every party, whether principal or agent, shipping inflammable, explosive, or dangerous goods, without previous full written disclosures to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

8. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading shall be void.

9. If upon inspection it is ascertained that the articles shipped are not those described in the bill of lading, the freight
251 charges must be paid upon the articles actually shipped, and at the rates and under the rules provided for by published classifications.

10. If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed sub-

ject to the further conditions, that no carrier or party shall be liable for any loss or damage resulting from the perils of the lakes, sea or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding or other accidents of navigation; or from the prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have liberty to call at intermediate ports; to tow and be towed, and to assist vessels in distress, and to deviate for the purpose of saving life or property.

11. No carrier shall be liable for delay, nor in any other respect than as warehousemen, while the said property awaits further conveyance, and in case the whole or any part of the property specified herein be prevented by any cause from going from said port in the first steamer, of the ocean line above stated, leaving after the arrival of such property at said port, the carrier hereunder then in possession is at liberty to forward said property by succeeding steamer of said line, or, if deemed necessary, by any other steamer.

12. This contract is executed and accomplished, and all liability hereunder terminates, on the delivery of the said property to the steamship, her master, agent or servants, or to the steamship company, or on the steamship pier at the said port, and the inland freight charges shall be a first lien, due and payable by the steamship company.

With respect to the service after delivery at the port of New Orleans, La., it is agreed that:

The ship shall have liberty to sail with or without pilots; that the carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the goods; and in case the ship shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamship; that the carrier shall not be liable for loss or damage occasioned by fire from any cause or wheresoever occurring; by barratry of the master or crew; by robbers; by arrest and restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; by heating, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for land damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor for risk of craft, hulk, or transshipment; nor for any loss or damage caused by the prolongation of the voyage, and that the carrier shall not be concluded as to correctness of statements herein of weight, quality, contents and value. General average payable according to York-Antwerp rules, 1890.

It is also mutually agreed that this shipment is subject to all the terms and provisions of, and all the exceptions from liability contained in, the act of Congress of the United States, approved on the 13th day of February, 1893.

252 I. It is also mutually agreed that the carrier shall not be liable for articles comprised in section 4281 of the Revised Statutes of the United States, unless notice of the true character and value thereof is given and same is entered in the bill of lading.

II. Also, that shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such shipper be principal or agent; and such goods may be thrown overboard or destroyed at any time without compensation.

III. Also, that the carrier shall have a lien on the goods for all freights, primages and charges, and also for all fines or damages which the ship or cargo may incur or suffer by reason of the incorrect or insufficient marking, numbering, or addressing of packages or description of their contents.

IV. Also, that in case the ship shall be prevented from reaching her destination by quarantine, the carrier may discharge the goods into any depot or lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

V. Also, that the ship may commence discharge immediately on arrival and discharge continuously, the collector of the port being hereby authorized to grant a general order for discharge immediately on arrival, and if the goods be not taken by the consignee within such time as is provided by the regulations of the port of discharge, they may be stored by the carrier at the expense and risk of their owners.

VI. Also, that full freight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

VII. Also, that if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the carrier shall be entitled to recover the difference from the shipper.

VIII. Also, that in the event of claims for short delivery when the ship reaches her destination, the price shall be the market price at the port of destination on the day of the ship's entry at the custom-house, less all charges saved.

IX. Also, that merchandise on wharf awaiting shipment or delivery be at shipper's risk of loss or damage by fire and/or flood, not happening through the fault or negligence of the owner, master, agent or manager of the vessel.

X. Also, that this bill of lading, duly endorsed, be given up to the ship's consignee in exchange for delivery order.

XI. Also, that the freight prepaid will not be returned, goods lost or not lost.

XII. Also, that parcels for different consignees collected or made up in single packages addressed to one consignee, pay full freight on each parcel.

XIII. Also, that freight payable on weight is to be paid on gross weight landed from ocean steamship, unless otherwise agreed to or herein otherwise provided, or unless the carrier elects to take the freight on the bill-of-lading weight.

253 XIV. Also, it is stipulated that in case the whole or any part of the article specified herein be prevented by any cause from going in the first steamship leaving after the arrival of such articles at said port, the carrier is only bound to forward them by succeeding steamship employed in this line, or if deemed necessary by said carrier it may forward them in other steamships.

XV. Also, that the property covered by this bill of lading is subject to all conditions expressed in the approved forms of bills of lading in use by the steamship company at time of shipment, and to all local rules and regulations at port of destination not expressly provided for by the clauses herein.

And finally, in accepting this bill of lading, the shipper, owner and consignee of the goods, and the holder of the bill of lading, agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee or holder.

In witness whereof, the agent, signing on behalf of the said The Sherman, Shreveport & Southern Railway Company, and of the said Ocean Steamship Company, or ocean steamer and her owner, severally and not jointly, hath affirmed to three bills of lading, all of this tenor and date, one of which bills being accomplished the others to stand void.

Dated at Greenville, Texas, this 29th day of October, 1894.

A. L. DONNER,

*Agent on Behalf of Carriers Severally but Not Jointly.*

Stamped across the face in red: "To be compressed."

Endorsed.

R. T.

T. C.

March 23, 1897.

H. L. Edwards & Co.

Deliver to order of the United States nat. bank for account of Greenville nat. bank. W. A. Williams, cashier.

Deliver to —— ——, without recourse upon the United States national bank New York city. H. C. Hopkins, cashier.

254 E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT C.

(See *ante*, p. 14.)

No. 215. 20 Feb., '95.

*Order of 24th Oct.*, 1894.

Invoice of 100 bales cotton, bought by H. L. Edwards & Co., Dallas, Texas, for account of Mr. K. Siebert ac. Roederer freres A. Marandi & Co.

Grade, good midg. 1⅛ in staple.
Shipped via S., S. S. R. R. and Elder, Dempster & Co. S. S. line.

Manchi, due 23 Octob., 100 @ 40 fr.

| Marks. | Bales cotton. | | |
|---|---|---|---|
| DIXO | 100 | Weighing..... | 54,063 |
| Edwards | | Less 6 %..... | 3,244 |
| | | 50,819 lbs. @ $3\frac{9}{32}$d..... | £694.15.10 |
| | | Less freight @ 1.17 fr. 100 lbs.... | 131.15. 6 |
| | | | £563. 0. 4 |

No. K 23046.

Reimbursement
Draft No. 1014 at sixty days
On Credit Haveuis Havre
Favor of ourselves for ..... Fs. 14,188.10
Insured with Ins. Co. of N. America
Certificate No. 62981 for $3,100.00

49

167

E. & O. E.
Dallas, Texas, 27 Oct., 1894.

H. L. EDWARDS & CO.,
P'r W. S. HOLBROOK.

255 E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT D.

(See *ante*, p. 14.)

Form 2370.

The Texas & Pacific Railway Co.

NEW ORLEANS, LA., *Oct.* 27, 1894.

Messrs. Elder, Dempster & Co., agents Elder, Dempster & Co. S. S. line:

I have this day engaged 500 bales cotton for shipment by the Elder Dempster & Co. S. S. line, for Havre, France, at 49.21 cents per one hundred pounds, compressed cotton, account of—

Delivery unrestricted.
Contract No. 73.
Total 3,000 bales.

Yours respectfully,

E. D. & CO.
M. & R. W.
——— ———,
*Agent T. & P. Railway Co.*

E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT D 1.

(See *ante*, page 14.)

Form 2370.

The Texas & Pacific Railway Co.

NEW ORLEANS, LA., *Oct.* 24, 1894.

Messrs. Elder, Dempster & Co., agents Elder, Dempster & Co. S. S. line:

I have this day engaged 1,000 bales cotton for shipment by
256 the Elder, Dempster & Co. S. S. line, for Havre, France, at 49.21 cents per one hundred pounds, compressed cotton, account of—

Delivery unrestricted.
Contract No. 73.
Total 2,000 bales.

Yours respectfully,

E. D. & CO.
M. & R. W.
——— ———,
*Agent T. & P. Railway Co.*

E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT D 2.

(See *ante*, p. 14.)

Form 2370.

The Texas & Pacific Railway Co.

NEW ORLEANS, LA., *Oct.* 24, 1894.

Messrs. Elder, Dempster & Co., agents Elder, Dempster & Co. S. S. line:

I have this day engaged 1,000 bales cotton for shipment by the Elder, Dempster & Co. S. S. line, for Havre, France, at 49.21 cents per one hundred pounds, compressed cotton, account of—

Delivery unrestricted.

Contract No. 73.

Yours respectfully,

E. D. & CO.
M. & R. W.
——— ———,
*Agent T. & P. Railway Co.*

257 E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT E.

(See *ante*, p. 14.)

United States Circuit Court, Southern District of New York.

JOHN R. CALLENDER, OTTO MAGNUS, and HENRY C. Holder *against* THE TEXAS AND PACIFIC RAILWAY COMPANY. } Action No. 2.

And thirty-two other cases.

It is hereby stipulated between the parties hereto:

First. That the defendant does not and will not raise any question as to the jurisdiction of the court herein, and that no evidence need be offered by the plaintiffs on the subject of jurisdiction or as proof of the allegations contained in paragraph numbered "first" of the complaint in the above-entitled actions and proof on the subject of jurisdiction and of said paragraph is hereby waived.

Second. That the New Orleans prices current per pound for the grades of cotton covered by the bills of lading in this action at the date of said bills and as fixed by the superintendent of the New York cotton exchange are as set forth in Schedule A hereunto annexed.

Third. That the testimony of Edward L. Sargent taken on behalf of the defendant in the action brought by John Henry Clayton and others against this defendant may be read in evidence, on
258 behalf of said defendant from the stenographer's minutes of the trial of that action, and shall be taken to be the evidence

of said Edward L. Sargent subject, however, to all objections that may be made thereto.

Dated New York, January 3, 1899.

EVARTS, CHOATE & BEAMAN,
*Attorneys for Plaintiffs.*

RUSH TAGGART,
*Attorney for Defendant.*

SCHEDULE A.

| 1894. | Mid. | Fully mid. | Good mid. | Fully g. mid. |
|---|---|---|---|---|
| Oct. 2. | | | | 6 3/16 |
| 6. | | | 6 1/8 | 6 3/8 |
| 8. | 5 3/4 | | 6 1/8 | 6 3/8 |
| 9. | 5 11/16 | 5 7/8 | | |
| 10. | | 5 13/16 | 6 | |
| 11. | 5 9/16 | 5 3/4 | 5 15/16 | 6 3/16 |
| 12. | 5 7/16 | 5 5/8 | 5 13/16 | 6 1/16 |
| 13. | | 5 5/8 | 5 13/16 | 6 1/16 |
| 15. | | 5 5/8 | 5 13/16 | 6 1/16 |
| 16. | | | 5 13/16 | 6 1/16 |
| 17. | | | 5 13/16 | |
| 18. | | 5 9/16 | 5 3/4 | 6 |
| 19. | | 5 9/16 | 5 3/4 | 6 |
| 20. | | | 5 11/16 | 5 15/16 |
| 22. | 5 1/4 | 5 7/16 | 5 5/8 | 5 7/8 |
| 23. | | 5 15/32 | 5 5/8 | |
| 24. | | 5 15/32 | 5 5/8 | |
| 25. | 5 5/16 | | 5 5/8 | |
| 26. | | | 5 9/16 | |
| 27. | | 5 13/32 | 5 9/16 | |
| 29. | | 5 13/32 | | |
| 30. | 5 1/4 | 5 13/32 | 5 9/16 | |
| 31. | | 5 11/32 | 5 1/2 | |
| Nov. 1. | | 5 11/32 | | |
| 2. | | | 5 1/2 | |
| 7. | | | 5 7/16 | |

For staple 1/8 to 1/4 add 1/4c. per pound.

(Here follow diagrams marked pp. 259 to 266, inclusive.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

267 E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., *Nov.* 1, '94.

Freight agent.

Mr. C. G. Miller, agent, New Orleans, La.

DEAR SIR:

*Cotton Report.*

| | | |
|---|---|---|
| On hand in cars last report, 58 cars | 3,386 | B/c |
| Received today, 36 " | 1,313 | " |
| Unloaded today, 34 " | 1,692 | " |
| On hand in cars tonight, 61 " | 3,007 | " |
| On wharf tonight | 20,193 | " |
| Del. S. S. today | 1,765 | " |
| Total receipts this season | 49,154 | " |
| " " last " | 35,840 | " |
| " increase this " | 13,314 | " |
| " delivered S. S. this season | 25,286 | " |
| Forwarded to New Orleans | 668 | " |

| Insurance report. | S. S. line. | Dest. | On cars, 61. |
|---|---|---|---|
| Through 4,331 B/c | E. D. line. | Bremen | 515 B/c |
| " 5,375 " | " | Havre | 884 " |
| " 4,447 " | " | Liverpool | 151 " |
| " 3,000 " | Harrison. | " | 45 " |
| Local 3,040 | | | 1,412 " |

*Cotton Ships' Report.*

S. S. British Crown left wharf at 6 a. m. Her total cargo taken at the wharf is destined for Havre and consisted of 6,151 B/c and E. D. line 1 car oak lumber and E. D. line 1 car staves acc't E. D. line, five hundred fifty-nine (559) sacks C/s meal, on acc't Trufant and Co. 525 sacks C/s cake acc't Trufant and Co.

S. St. Irene took 898 B/c acc't McFadden and Bro. for Havre. Stoddard & Co. ag'ts and left wh'f at 3 p. m.

268 S. S. Hajeen took 867 B/c for Bremen acc't E. D. line.

S. S. Straits of Magellan waiting for cotton acc't McFadden & Bro. for Genoa, A. K. Miller, M. & Co. ag'ts.

S. S. Electrician expected for Liverpool cotton acc't Harrison line.

Resp'y, C. G. MILLER, *Ag't.*

E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., 11, 2, '94.

Freight agent.

Mr. C. G. Miller, agent, New Orleans, La.

DEAR SIR:

*Cotton Report.*

| | | | |
|---|---|---|---|
| On hand in cars last report, | 61 cars | 3,007 | B/c |
| Received today, | 15 " | 604 | " |
| Unloaded today, | 34 " | 1,593 | " |
| On hand in cars tonight, | 42 " | 2,018 | " |
| On wharf tonight | | 21,405 | " |
| Delivered S. S. today | | 381 | " |
| Total receipts this season | | 49,758 | " |
| " " last " | | 37,114 | " |
| " increase this " | | 12,644 | " |
| " delivered S. S. this season | | 25,667 | " |
| For'd to New Orleans | | 668 | " |

| Insurance report. | | S. S. line. | Dest. | On cars, 42. | |
|---|---|---|---|---|---|
| Through | 4,152 | B/c E. D. line. | Bremen | 562 | B/c |
| " | 5,474 | " " | Havre | 885 | " |
| " | 4,497 | " " | Liverpool | 34 | " |
| " | 3,000 | " Harrison. | " | 75 | " |
| Local | 4,282 | " Local | | 462 | " |

269 *Cotton Ships' Report.*

S. S. Straits of Magellan waiting at wharf for Genoa cotton account McFadden and Bro. A. K. Miller M. & Co., ag'ts.

S. S. Hajeen took 381 B/c account Elder D. line for Bremen. Total receipts to date 1,248 B/c.

S. S. Electrician arrived at wharf at 7.35 a. m. and occupied outside berth opposite No. 2 shed the inside berth being taken up by S. S. Straits of Magellan. The stevedore refused to load her from this position although everything possible was done to facilitate the handling of the cotton, yet he refused to start loading and left wharf at 10.45 a. m. for Southport. This steamer was to load Liverpool cotton account of the Harrison line.

Resp'y, C. G. MILLER, *Ag't.*

E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., *Nov.* 3, '94.

Freight agent.

Mr. C. G. Miller, agent, New Orleans, La.

DEAR SIR:

*Cotton Report.*

| | | |
|---|---|---|
| On hand in cars last report, 42 | 2,018 | B/c |
| Received today 40 | 1,109 | " |
| Unloaded " 41 | 1,669 | " |
| On hand in cars tonight, 41 | 1,458 | " |
| On wharf tonight | 21,580 | " |
| Del'd S. S. today | 1,494 | " |
| Total receipts this season | 50,867 | " |
| " " last " | | |
| " increase this " | | |
| " del'd S. S. this " | 27,161 | " |
| For'd to New Orleans | 668 | " |

270

| Insurance report. | S. S. line. | Dest. | On cars. |
|---|---|---|---|
| Through 4,241 B/c | E. D. line. | Bremen | |
| " 6,014 " | " | Havre | 1,072 B/c |
| " 4,497 " | " | Liverpool | 254 " |
| " 3,000 " | Harrison. | " | 120 B/c |
| Local 3,828 | | | 12 " |

*Cotton Ships' Report.*

S. S. Straits of Magellan took 957 B/c for Genoa acc't McFadden & Bro.

S. S. Hajeen took 537 B/c for Bremen acc't E. D. line. Total receipts to date, 1,785 B/cotton.

Respt.,

C. G. MILLER, *Ag't.*

E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., 11, 5, '94.

Freight ag't.

Mr. C. G. Miller, ag't, New Orleans.

DEAR SIR:

*Cotton Report.*

| | | | |
|---|---|---|---|
| On hand in cars, last report, | 53 cars | | 2,039 B/c |
| Received today, | 62 " | | 2,352 " |
| Unloaded " | 24 " | | 922 " |
| On hand tonight, | 91 " | | 3,469 " |
| On wharf " | | | 21,122 " |
| Del'd S. S. today | | | 2,110 " |
| Total receipts this season | | | 54,530 " |
| " " last " | | | 41,181 " |
| " increase this " | | | 13,349 " |
| " delivered S. S. this season | | | 29,271 " |
| For'd to New Orleans | | | 668 " |

271

| Insurance report. | | S. S. line. | Dest. | On cars, 91. |
|---|---|---|---|---|
| Through | 6,581 B/c | E. D. line. | Havre | 3,065 B/c |
| " | 5,214 " | " | Liverpool | 356 " |
| " | 3,160 " | Harrison. | " | |
| " | 3,916 " | E. D. line. | Bremen | 48 " |
| Local, | 2,251 | | | |

*Cotton Ships' Report.*

S. S. Straits of Magellan took 951 B/c for Genoa ace't McFadden & Bro., A. K. Miller, M. & Co., agents.

Total receipts to date, 1,908 B/c.

S. S. Hajeen took eleven hundred and fifty-nine (1,159) bales cotton a/c E. D. line for Bremen.

Total receipts to date 2,944 B/cotton.

Rehandled eleven cars for New Orleans.

Resp'y, C. G. MILLER, *Ag't.*

E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., 11, 6, '94.

Freight agent.

Mr. C. G. Miller, agent, New Orleans.

DEAR SIR:

*Cotton Report.*

| | | | |
|---|---|---|---|
| On hand in cars last report, | 91 cars | 3,469 | B / c |
| Received today, | 54 " | 2,246 | " |
| Unloaded " | 13 " | 549 | " |
| On hand tonight, | 132 " | 5,166 | " |
| On wharf " | | 19,695 | " |
| Delivered S. S. today | | 1,976 | " |
| Total receipts this season | | 56,776 | " |
| " " last " | | 41,256 | " |
| " increase this " | | 15,522 | " |
| " delivered S. S. this season | | 31,247 | " |
| For'd to New Orleans | | 668 | " |

272

| Insurance report. | | S. S. line. | Dest. | On cars, 132. | |
|---|---|---|---|---|---|
| Through, | 6,880 B / c | Elder D. line. | Havre | 3,904 | B / c |
| " | 5,416 " | " | Liverpool | 672 | " |
| " | 3,060 " | Harrison. | " | 37 | " |
| " | 2,871 " | E. D. line. | Bremen | 533 | " |
| " | 1,461 " | | | | |

*Cotton Ships' Report.*

S. S. Straits of Magellan took 577 B / c acc't McFadden & Bro. for Genoa. A. K. Miller, M. & Co., agents. Total receipts to date, 2,485 B / c.

S. S. Hajeen took 1,093 B / c for Bremen, acc't E. D. line. Total receipts to date 4,037 B / cotton.

S. S. Electrician took 100 B / c for Liverpool, acc't Harrison line. This ship arrived at wharf at 1 p. m. and dropped back at 2 p. m. to elevator wharf for grain a / c Glover & O., arrived again at cotton wharf opposite #2 shed outside Straits of Magellan where she remained.

Rehandled 3 cars cotton for New Orleans.

Respec.,

C. G. MILLER, *Ag't.*

273 E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., 11. 7. 94.

Freight agent.

Mr. C. G. Miller, agent, New Orleans, La.

DEAR SIR:

*Cotton Report.*

| | | | |
|---|---|---|---|
| On hand in cars last report, | 132 cars | ..... | 5,166 B/c |
| Received today, | 29 " | ..... | 1,204 " |
| Unloaded " | 38 " | ..... | 1,632 " |
| On hand tonight, | 123 " | ..... | 4,738 " |
| On wharf " | | ..... | 20,788 " |
| Delivered to S. S. today | | ..... | 1,966 " |
| Total receipts this season | | ..... | 57,980 " |
| " " last " | | ..... | 41,815 " |
| " increase this " | | ..... | 16,165 " |
| " delivered S. S. this season | | ..... | 33,213 " |
| For'd to New Orleans | | ..... | 668 " |

| Insurance report. | | S. S. line. | Dest. | On cars, 123. |
|---|---|---|---|---|
| Through, | 7,026 B/c | E. D. line. | Havre ..... | 4,182 B/c |
| " | 5,743 " | " | Liverpool ..... | 449 " |
| " | 2,298 " | Harrison. | " ..... | 37 " |
| " | 3,682 " | E. D. line. | Bremen ..... | 20 " |
| Local, | 1,739 " | ..... | ..... | 50 " |

*Cotton Ships' Report.*

S. S. Straits of Magellan took 412 B/c for Genoa acc't McFadden & Bro. A. K. Miller M. & Co. ag'ts. Total receipts to date 2,897 B/cotton.

S. S. Hajeen took 692 B/c for Bremen acc't E. D. line and left wharf at 11 a. m. Her total cargo taken at these wharves consisted of 4,729 B/c.

274 S. S. Electrician took 862 B/cotton for Liverpool acc. Harrison line. Total to date, 962 B/c.

Rehandled 7 cars cotton for New Orleans.

Resp'y. C. G. MILLER, *Ag't.*

E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., 11. 8. '94.

Freight agent.

Mr. C. G. Miller, agent, New Orleans, La.

DEAR SIR:

*Cotton Report.*

| | | | |
|---|---|---|---|
| On hand in cars last report, | 123 cars | ..... | 4,738 B/c |
| Received today, | 27 " | ..... | 1,137 " |
| Unloaded today, | 27 " | ..... | 1,116 " |
| On hand tonight, | 123 " | ..... | 4,759 " |
| On wharf tonight | | ..... | 20,900 " |
| Delivered S. S. today | | ..... | 1,004 " |
| Total receipts this season | | ..... | 59,117 " |
| " " last " | | ..... | 42,626 " |
| " increase this season | | ..... | 16,491 " |
| " delivered S. S. this season | | ..... | 34,217 " |
| For'd to New Orleans | | ..... | 668 " |

| Insurance report. | | S. S. line. | Dest. | On cars, 123. |
|---|---|---|---|---|
| Through, | 7,528 B/c | E. D. line. | Havre ..... | 4,740 B/c |
| " | 6,152 " | " | Liverpool ..... | 19 " |
| " | 1,431 " | Harrison. | " ..... | |
| " | 4,082 " | Bremen. | E. D. line ..... | |
| Local. | 1,707 | | | |

275 *Cotton Ships' Report.*

S. S. Straits of Magellan took 100 B/c for Genoa acc't McFadden and Bro., A. K. Miller, M. & Co., agents. Total cargo at this port consisted 2,997 B/cotton and left wharf 9 a. m.

S. S. Electrician took 904 B/cotton for Liverpool acc't Harrison line. Total to date, 1,866 B/c.

S. S. Malabar arrived at wharf at 1 p. m. for c/s cake acc't Steinhardt & Co.

Rehandled five cars for New Orleans.

Resp'y. C. G. MILLER, *Ag'nt.*

E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., 11. 9, '94.

Freight agent.

Mr. C. G. Miller, agent, New Orleans, La.

DEAR SIR:

*Cotton Report.*

| | | |
|---|---|---|
| On hand in cars last report, | 123 cars | 4,759 B/c |
| Received today, | 37 " | 1,059 " |
| Unloaded today, | 42 " | 1,654 " |
| On hand tonight, | 114 " | 4,164 " |
| On wharf tonight | | 20,580 " |
| Delivered S. S. today | | 547 B/c |
| Total receipts this season | | 60,176 " |
| " " last " | | 43,520 " |
| " increase this season | | 16,656 " |
| " delivered S. S. this season | | 34,764 " |
| For'd to New Orleans | | 668 " |

| 276 | Insurance report. | S. S. line. | Dest. | On cars, 114. |
|---|---|---|---|---|
| Through, | 8,897 B/c | E. D. line. | Havre | 3,839 B/c |
| " | 5,867 " | " | Liverpool | 215 " |
| " | 599 " | Harrison. | " | |
| " | 3,795 " | Bremen. | E. D. line | 110 " |
| Local, | 1,422 " | | | |

*Cotton Ships' Report.*

S. S. Electrician took 547 B/c for Liverpool via Harrison line. Total to date, 2,413 B/c, and left wharf at 12.30 p. m.

S. S. Malabar took 1578 sacks c/s cake, acc't Steinhardt & Co., for Copenhagen.

Rehandled 15 cars for New Orleans.

Resp'y, C. G. MILLER, *Ag't.*

277 E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., 11, 10, '94.

Freight agent.

Mr. C. G. Miller, agent, New Orleans, La.

DEAR SIR:

*Cotton Report.*

| | | | |
|---|---|---|---|
| On hand in cars last report, 114 cars | | 4,164 | B/c |
| Received today, | 18 " | 589 | " |
| Unloaded today, | 8 " | 274 | " |
| On hand tonight, | 124 " | 4,479 | " |
| On wharf tonight | | 20,854 | " |
| Delivered S. S. today | | | |
| Total receipts this season | | 60,765 | " |
| " " last " | | 45,033 | " |
| " increase this " | | 15,732 | " |
| " delivered S. S. this season | | 34,764 | " |
| For'd to New Orleans | | 668 | " |

| Insurance report. | | S. S. line. | Dest. | On cars, 124. | |
|---|---|---|---|---|---|
| Through, | [redacted] B/c | E. D. line. | Havre | 4,081 | B/c |
| " | [redacted] " | " | L'pool | 314 | " |
| " | [redacted] " | Harrison. | " | | |
| " | [redacted] " | E. D. line. | Bremen | 84 | " |
| Local. | [redacted] " | | | | |

*Cotton Ships' Report.*

S. S. Electrician took 1,524 sax c/s cakes for Steinhardt & Co.; total to date, 3,102 sax c/s cake.

S. S. Malabar took 3,401 sax c/s meal and 750 [redacted] acc't Steinhardt and Co.

Resp'y,

C. G. MILLER, *Ag't.*

[redacted] cars for New Orleans.

278 E. H. L., JANUARY 3, 1900. PLAINTIFFS' EXHIBIT H.

(See *ante*, p. 40.)

WESTWEGO, LA., 11, 12, '94.

Freight agent.

Mr. C. G. Miller, agent, New Orleans.

DEAR SIR:

*Cotton Report.*

| | | |
|---|---|---|
| On hand in cars last report, | 145 cars | 5,245 B/c |
| Received today, | 65 " | 2,760 " |
| Unloaded " | 0 " | 0 " |
| On hand tonight, | 206 " | 8,005 " |
| On wharf " | | 20,879 " |
| Delivered S. S. today | | 0 " |
| Total receipts this season | | 64,316 " |
| " " last " | | 48,021 " |
| " increase this " | | 16,295 " |
| " del'd S. S. this " | | 34,764 " |
| For'd to New Orleans | | 668 " |

| Insurance report. | | S. S. line. | Dest. | On cars, 206. |
|---|---|---|---|---|
| Through, | 11,438 B/c | E. D. line. | Havre | 6,726 B/c |
| " | 5,892 " | " | Liverpool | 125 " |
| " | 599 " | Harrison. | " | 25 " |
| " | 2,700 " | E. D. line. | Bremen | 100 " |
| Local | 250 " | | | 1,029 " |

(See *ante*, p. 44.)

When the rates charged for transportation are less than tariff, the number of special authorizing such rate must be stated in the waybill.
Form 66.* 8-92-10m.

East Line & Red River railroad. W. B. No. T 70.

W. M. Giles, receiver,

*Cotton Waybill.* Car No. 832.

From Greenville station, Tx. div., to New Orls., Oct. 31, 1894. Via Jefferson & T. & P. Whose car, S. S. & S. Bx.

| Consignor. | Consignee and destination. | Bill of lading. No. bales signed for. | Bill of lading. Date of B. L. | Bill of lading. Number of B. L. | No. bales forwarded on this W. B. | Marks and tag Nos. | Weight | Rate. | Freight. | Charges. | Prepaid. | Total to pay. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| H. L. E. & Co. | Order Havre, France. N'tfy K. Siebert, Havre, France. | 100 | 10-27 | F 31 | 36 | DINO 2369-2504 | Spl. 82c. 19,476 Comp. 10 Byd. 4923 | 57½ | 112 55 | C 19 48 | | 132 03 |
| Via | E. D. & Co. S. S. line. | | | [253] | | | | | Invoice wt. S. S. & S. T. & P. | Cont. 49 " 73 | | |
| | | | | | | | | | | Compr'd Greenville. | | |

Stamped on face: "Transferred at Jefferson. Date, 11-5, 1894. Into car No. 3622. Initial, T. & P."
"Set out at Westwego."

THE TEXAS & PACIFIC RAILWAY CO. 189

T. & P.

(See *ante*, p. 44.)

When the rates charged for transportation are less than tariff, the number of special authorizing such rate must be stated in the waybill.
Form 66.* 8-92-10m.

East Line & Red River railroad. W. B. No. T 71.

W. M. Giles, receiver.

*Cotton Waybill.* Car No. 839.

From Greenville station, Tx. div., to New Orls., Oct. 31, 1894. Whose car, S. S. & S. Bx.
Via Jefferson & T. & P.

| Consignor. | Consignee and destination. | Bill of lading. No. bales signed for. | Bill of lading. Date of B. L. | Bill of lading. Number of B. L. | No. bales forwarded on this W. B. | Marks and tag Nos. | Weight. | Rate. | Freight. | Charges. | Prepaid. | Total to pay. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| H. L. E. & Co. | Order H. L. Edwards and Co., Havre, France. Notify K. Siebert, Havre, France. | 100 | 10-27 | F 31 | 20 | DINO 2440-2468 | Spl. 82c. 15,680 Comp. Byd. | 5779 to 4921 | 80 67 [Inv. wt.] S. S. & S. T. & P. | 15 68 Cont. 49 " 75 Comp'd Greenville. | | 106 36 |
| | Via E. D. & Co. S. S. line. | | | | | Burnt at W. Wego, 11-12. | | | | | | |

Stamped across the face: "Transferred at Jefferson. Date, 11-5, 1894. Into car No. 4894. Initial, T. & P."
"Set out at Westwego."

281 E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT M FOR IDENTIFICATION.

(See *ante*, p. 182.)

NEW ORLEANS, *November 13th*, 1894.

Marshall J. Smith, city.

DEAR SIR: Herewith please find report.

November 13th, 1894.

Capt. J. P. McArdle reports: "At 6.30 o'clock last evening Corporal J. A. Boyle came to my house and notified me that there was a fire at Westwego. I at once came to the Jackson Street station and telephoned to Superintendent W. J. O'Connor. He told me that he had notified Mr. C. G. Miller, agent, and Mr. Pearsall, superintendent of the T. & P. R. R. and he instructed me to notify the agents and stevedores of vessels lying at Westwego wharf and then to proceed to Westwego and meet him there.

Two steamers were at Westwego: the S. S. Malabar, Ross, Howe & Morrow, agents. I telephoned to office of Ross, How- & Morrow, agents, and could not get an answer, and Special Feeney was sent to their office with a message notifying them of the fire. I telephoned to Mr. W. P. Ross at his residence but he had just left home. I then telephoned to Mr. Chas. K. Lincoln, stevedore of the Malabar and notified him.

The S. S. Leyden, consigned to Elder Dempster & Co. was also at Westwego I telephoned to Mr. Robert Warriner, representative of Elder Dempster & Co. and was informed that Mr. Warriner had left home to go to the fire. Cabs were sent to the residence of Mr. H. Hanselman, stevedore for S. S. Leyden and for his foreman, Mr. Patrick Powers. Mr. Powers was sick and could not leave home.

282 I then proceeded to Westwego and upon arriving at Walnut Street ferry I found there Superintendent W. J. O'Connor and Superintendent Pearsall and Agent Miller of the T. & P. R. R.; also officers T. H. Campbell, George W. Weber and M. Peters, who were on duty at Westwego. The officers stated that when they left the wharf at 6.05 p. m everything was all right and about 6.15 p. m. while they were on the ferry crossing the river they saw fire break out in the middle of No. 2 shed.

Superintendent W. J. O'Connor secured a skiff and Messrs. Pearsall and Miller of T. & P. R. R., a representative of Times-Democrat and N. O. Picayune and myself were rowed across to Westwego. Sheds Nos. 1 and 2 at that time had been totally destroyed and the contents (cotton) was piled up in river and batture and was a solid mass of fire.

Four tugs were at the wharf above the elevator conveyor with leads of hose upon the wharf, throwing streams of water upon the burning cotton. The elevator employees were in the conveyor throwing water upon the end of conveyor to keep the same from

being heated and catching on fire, and they succeeded in saving the conveyor.

Supt. W. J. O'Connor telephoned to Chief Thos. O'Connor and Ass't Chief Engineer Jas. Donovan of the New Orleans fire department and told them that the T. & P. R. R. would consider it a great favor if he would lend him some hose as they had not sufficient on hand to get a stream from tugboat Napoleon to the burning cotton, and Chief Engineer O'Connor sent five lengths of hose there.

The tugboats Two Brothers and Napoleon towed the steamers Malabar and Leyden from the wharf into midstream where they anchored.

When Superintendent W. J. O'Connor was informed of the fire he telephoned to Captain Barrett of the harbor precinct and requested him to send some tugs to Westwego as there was no fire-engines there and they might succeed in saving some of the property from destruction.

283 Officer P. A. Robeau who was on duty in No. 2 shed, says that he and the private watchman for the T. & P. R. R. Antoine Valle had just left one another, and he was making a round on river side of the shed when he heard Valle call out 'fire' and he ran to where Valle was, and found fire in centre of the shed between posts 25 and 26. He tried to assist in putting out the fire but it spread rapidly and they had to get away from it. They then tried to get at the hose in the middle of the shed but had to leave on account of the heat and in a moment's time the fire had spread to the cotton in the two sheds and they had to run to get away from the fire.

Officer E. Peake who was on duty in No. 1 shed and in charge of night detail at Westwego, states that when he arrived there at 5.45 p. m. none of the laborers or clerks were there and that Mr. Wilkinson, supt. at Westwego for the T. & P. R. R. left there at 6 p. m. About 6.15 p. m. while he was patrolling No. 1 shed he saw a reflection of the fire in No. 2 shed and he ran there and found in section No. 25, Officer P. A. Robeau and Private Watchman Valle, trying to get at the hose and by hard work they got at the hose and turned on the water, but the stream was so weak that it was of no use to them. They then ran to hose in centre of shed but the fire had gained such headway that they could not stand the heat. The fire spread with great rapidity and in a few moments, the cotton in both sheds was on fire. He sent a man to Mr. Wilkinson's house to notify him of the fire.

Officer Peter Schoen, who was on duty underneath the wharf reports that he had patrolled under shed No. 1 and had gone underneath shed No. 2 and was about centre of shed when he heard a cry of 'fire' and in a few moments the cotton over him was on fire and he had to run for his life. He saw no person underneath the wharf and saw no skiff under there.

284 Antoine Valle, private watchman for T. & P. R. R. at Westwego, says that at 6.15 p. m. there was no person in the sheds except the Boylan officers and himself. He had just left Officer

P. A. Robeau at lower end of No. 2 shed and he was engaged in opening the patrol boxes for the officers to get at the keys to turn in signals for watchmen's clock. He had finished that duty and climbed on top of a pile of cotton, a habit of his, to take a look through the shed to see that everything was all right, when he saw a light between sections 25 and 26. He thought the light was from Officer Robeau's lamp and he called to Officer Robeau, and not receiving an answer, he went to see what the light was and found a bale of cotton on fire.

The bale was in the bottom tier of a pile of cotton, about 9 tiers in height. The fire was in bottom part of bale next to the planking of the wharf. The tier was close to another pile of cotton. He called to Officer Robeau and he came to his assistance, and they tried to get at the water service but it was covered with cotton and planking and he had to break a plank to get at the valve to turn the water on. In the meantime the fire had gained great headway and the stream of water from the service was too weak to be of any use and they had to abandon it. Valle says that he and Officers Peake and Robeau then tried to get the water service in centre of No. 2 shed at work but they had to abandon it on account of the heat. The fire spread in a few moments to No. 1 shed and set the cotton in that shed on fire. He saw that there was no chance of saving the shed and he went into the office at the lower end of shed and saw one of the clerks in the office, a Mr. Smith. He said to Mr. Smith 'Let us try and save the books' and he and Mr. Smith with assistance of Officer Schoen of Boylan's police, succeeded in saving the books which were taken to the office of the elevator and placed there for safety. Valle says that just after the fire started in No. 2 shed, and while he was upon the wharf in front of the
285 shed, he saw three Carrollton negroes in a skiff about 150 feet away from the wharf and he called upon them to come to his assistance and they paid no attention to him. He says that he knows they were Carrollton negroes because they rowed their boat towards Carrollton.

Baptiste Moore, colored, and another colored man whose name he does not know—both employed as laborers for T. & P. R. R. at Westwego were upon the levee and came to his assistance but they could not check the fire. The bale that caught on fire was not in any passageway but was tiered close to another pile of cotton and they had great difficulty in getting at it.

Officer Peake and Officers Robeau and Schoen were placed by Mr. Wilkinson on tugboat Alert to prevent any person from coming there in skiffs and carrying the cotton away. Mr. Sykes, representing the T. & P. R. R. was on the tug and about 11 p. m. he discovered an old white man in a skiff with a bale of cotton in tow. The man claimed that he had found the bale floating in the river. Sykes took the bale away from the man and ordered him away from there and he left.

Officers Peake, Robeau and Schoen remained on duty at Westwego until 6 o'clock this morning and then reported at Jackson Street station.

22,000 (twenty-two thousand) bales of cotton that were stowed under Nos. 1 and 2 sheds were totally destroyed together with the sheds and office in No. 1 shed. 54 (fifty-four) cars loaded with cotton that were on the tracks between the sheds and levee caught on fire and were totally destroyed.

The following-named tugs were at Westwego, pumping water upon the burning cotton: B. D. Wood, Napoleon, W. G. Wilmot, El Chico and Corsair."

Yours truly, THOS. N. BOYLAN, *Principal.*
A.

286 E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT N.

(See *ante*, p. 213.)

(*Telegram.*)

Received at the Western Union building, 195 Broadway, N. Y., Nov. 12, 1894.

Dated DALLAS, TEXAS, 12.

To C. E. Satterlee, 195 B'way, N. Y.:

Fire broke out on cotton wharf at Westwego about six ten this p. m., destroying wharf sheds about twenty-two thousand bales of cotton and forty-two cars. Watchman reports fire first discovered in No. 2 shed about middle, and when first discovered was in a blaze. Elevator had full steam up and elevator force on hand to work pumps. At this hour, nine o'clock, reported under control, and elevator and conveyor safe. Will make full report tomorrow.

L. S. THORNE.

E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT O.

(See *ante*, p. 214.)

(*Telegram.*)

Received at the Western Union building, 195 Broadway, N. Y., 2.05, Nov. 14.

NEW ORLEANS, LA., 14.

C. E. Satterlee, 195 B'way, New York:

After going over the ground pretty thoroughly this morn-
287 ing I find but little change to make in first report of fire at Westwego. The cotton wharf is entirely consumed. The six o'clock report of Monday evening showed twenty thousand eight hundred & seventy-nine bales on wharf. Fifteen hundred to two thousand bales saved—badly damaged. Forty cars were burned, containing about two thousand bales. No damage to elevator, conveyor elevator, wharf, or any property connected with the elevator. The origin of the fire is still a mystery. The day & night watch changed at six o'clock, and the fire was discovered at six twenty. Laborers that were loading steamship left the wharf at five thirty.

L. S. THORNE.

E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT P.

(See *ante*, p. 214.)

(*Telegram.*)

Received at the Western Union building, 195 Broadway, N. Y., 2.27, Nov. 13.

DALLAS, TEX., 13.

C. E. Satterlee, 195 B'way, New York:

Just reached home from New Orleans yesterday, and Mr. Fenby and I leave for New Orleans this morning. Later reports make no material change in report sent you last night of the trouble at Westwego.

L. S. THORNE.

288 E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT Q.

(See *ante*, p. 214.)

NEW ORLEANS, LA., *November* 16, '94.

George J. Gould, New York:

Have just returned from Westwego and have had a conference with Judge Howe. The loss will amount to 20,000 bales, with a possible salvage of 2,000 bales in a damaged condition. About one-half of the cotton destroyed was under bill of lading of connecting line, which contained an exemption clause against fire loss. The remainder was under our own bill of lading covering shipment of foreign cotton which contained no exemption clause. It is Judge Howe's opinion that we are not liable for the cotton covered by the bill of lading containing the exemption clause, and that we may be able to make a defense in respect to the balance under the Louisiana common carrier law, which is more favorable than that of other States. May be able to telegraph you further tomorrow.

C. E. SATTERLEE.

289 E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT R.

(See *ante*, p. 217.)

Texas and Pacific Railway Company, 197 Broadway (Western Union building).

C. E. Satterlee, sec'y & treas.

NEW YORK, *Oct. 15th*, 1894.

Export wharf—Westwego.

Mr. L. S. Thorne, third vice-pres't & gen'l mgr., Dallas, Texas.

DEAR SIR: Noting the very heavy movement of cotton during the last week, or since October 1st, please let me know the condition

at New Orleans and if it is forcing much accumulation at that point particularly on our export cotton wharf? I feel very anxious on the subject, fearing an accumulation that may expose us to great risk.

Yours truly,
(Signed) C. E. SATTERLEE,
*Sec'y & Treas.*

290 E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT 8.

(See *ante*, p. 218.)

El Paso route.

Texas & Pacific Railway Co.

L. S. Thorne, third vice-president and gen'l manager; J. W. Everman, ass't general manager.

On No. 31, T. C. div.

DALLAS, TEX., *Oct. 19th*, 1894.

Mr. C. E. Satterlee, secretary and treasurer T. & P. R'y Co., New York city.

DEAR SIR: Acknowledging receipt and referring to yours of the 15th, which reaches me on the road; so far, our cotton has been moving very nicely; we have not handled any cotton as yet, on open cars—in fact there would be no object in doing so, as the compresses have been kept fully supplied, and could not be further crowded, without blocking up. My last report from New Orleans showed about twenty thousand bales of cotton on hand at New Orleans and Westwego; we have had some little delay on the T. C. division, on account of the compress at Bonham being broken down, and the compress at Paris being overcrowded. The Paris compress has now commenced running night and day, which is helping out matters some. This explains, to a certain extent, the large amount of cotton that is shown on platforms on the T. C. division: last night we had fifteen hundred bales at Paris, and 1,500 bales at Bonham compress, which is included in cotton shown on platform. The first steamer in the Teche line arrived at Indian Village day before
291 yesterday, with 1,207 barrels of sugar; sugar was all transferred to cars, and moved out the same evening. Our elevator at Donaldsonville should have been in working order yesterday, and expect to commence handling sugar at that point at once. Everything is moving very smoothly, and all indications are promising for a continued heavy business. We are again needing rain very badly. It is so fearfully dry that it is a wonder we are not having more fires. A long rainy spell, as you know, would be very disastrous, but if it would rain for a day or two, it would be a blessing, at this time.

Yours very truly, L. S. THORNE.

E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT T.

(See *ante*, p. 218.)

(*Telegram.*)

Received at the Western Union building, 195 Broadway, N. Y., Oct. 21, 1894.

Dated DALLAS, TEX., 21.

To C. E. Satterlee, 165 Broadway, N. Y.:

Wrote you yesterday and day before about cotton situation at New Orleans. This morning's report shows a great improvement total amount of cotton on hand at New Orleans and Westwego being twenty-nine thousand bales with good prospects of prompt deliveries in the next few days.

L. S. THORNE.

292 E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT U.

(See *ante*, p. 218.)

(El Paso route.)

The Texas and Pacific Railroad Co.

L. S. Thorne, third vice-president and gen'l manager; J. W. Everman, ass't general manager.

DALLAS, TEX., *October 20th*, 1894.

Mr. C. E. Satterlee, secretary and treasurer, New York city.

DEAR SIR: Referring to yours of the 15th inst., making inquiries in regard to conditions at New Orleans.

I am very much surprised, on my return to the office, after a few days' trip over the eastern division, to find, on checking the reports, that the cotton on hand at New Orleans has doubled up on us in the last five or six days. We have on hand, the last report, at New Orleans and Westwego, forty-eight thousand bales of cotton, and I have taken the matter up vigorously—and am in hopes that we can force the delivery.

Yours very truly, L. S. THORNE.

293 E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT V.

(See *ante*, p. 219.)

(*Telegram.*)

Received at 313 Flatbush Ave., op. 7th Ave., Brooklyn, N. Y., Nov. 6, 1894.

Dated DALLAS, TEXAS.

To C. E. Satterlee, 18 Fisk Pl.:

The labor trouble and delay in loading vessels at New Orleans the past few days has increased. The amount of cotton on hand

undelivered our reports this morning shows about twenty-six thousand bals. of cotton at Westwego, and the same amount at New Orleans with but poor prospects for deliveries today or tomorrow, or until after the election.

L. S. THORNE.

E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT W.

(See *ante*, p. 219.)

Texas and Pacific Railway Company, 195 Broadway (Western Union building).

C. E. Satterlee, sec'y & treas.

NEW YORK, *Nov. 9th*, 1894.

Mr. L. S. Thorne, third vice-pres't and gen'l man., Dallas, Texas.

DEAR SIR: The Carnegie people inform me that the rails have been loaded in barges for some days awaiting a higher stage
294 of water, and that they expect to get them off within the next forty-eight hours. I have instructed them to ship the entire two thousand tons, considering that it was best, owing to the condition of water.

You understand, of course, that it is desirable that these rails should appear in the accounts of the present year. I would suggest further that you arrange so that all expenses connected with the improvements on the Atchfalaya River bridge or any other current work, appear in the accounts for this year, to the end that as little as possible be carried over into the new year.

I received your wire of the 6th relative to the accumulation of cotton at Westwego and on the New Orleans side, and wired you in reply asking if the shipment of domestic cotton from New Orleans could not be facilitated. As I understand it, all export cotton is detained at our Westwego wharf, and only east-bound cotton crosses the river. If such is the case, it seems to me that with the Cromwell, L. & N., and other lines ready to receive, the amount could be kept down to normal figures. The Clyde line here have complained from time to time that they were receiving no cotton from New Orleans, and asking us what we were doing with it. I note a paragraph in the papers that the sheds of the West Indian & Pacific S. S. Co., near St. James street, was consumed with 4,000 bales of cotton on the 4th, loss $150,000, which is coming pretty near our locality.

The earnings for the fourth week in October show up better than I expected and gives us the largest month in the history of the company, and November opens with equal promise. With these large earnings we should be able to make an excellent showing at the end of the year, and be able to clear up all floating debt and show a better financial condition than ever before. If we could have anticipated these large earnings, it might have been well to have done

something toward equipping our rolling stock with brakes
295 and couplers. Have you come to any decision yet in regard to the pattern of coupler you propose to use, and which air brake. The Westinghouse seems to be obtaining a victory over the New York in the courts, which, if continued, may render the New York a less desirable brake to employ.

Yours very truly,

(Signed) C. E. SATTERLEE,
*Sec'y & Treas.*

E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT X.

(See *ante*, p. 219.)

NEW YORK, *Nov. 10th*, 1894.

Mr. L. S. Thorne, Dallas, Tex.:

What is the situation at New Orleans. Any prospect of speedy relief. Is our cotton at Westwego exposed to rioters in any way? Please answer fully.

C. E. SATTERLEE.

E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT Y.

(See *ante*, p. 219.)

(*Telegram.*)

Received at the Western Union building, 195 Broadway, N. Y., Nov. 10.

NEW ORLEANS, 10.

C. E. Satterlee, 195 B'way, New York:

While the situation here is unsatisfactory similar conditions
296 have existed during the heavy cotton receipts each season up until about two weeks ago our cotton was moving out better than during any former season but the labor troubles is the principal cause of the accumulation we have about sixty thousand bales of cotton on hand at New Orleans and Westwego and are doing everything possible to force deliveries if the vessels due and arranged for load promptly. The accumulation should be cut down very materially in the next ten days. The present indications are more encouraging.

L. S. THORNE.

E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT Z.

(See *ante*, p. 219.)

(*Telegram.*)

Received at the Western Union building, 195 Broadway, N. Y., Nov. 10, 189–.

Dated NEW ORLEANS, LA., 10.

To C. E. Satterlee, 195 Broadway, New York:

Your message just received after going over the ground thoroughly personally wired you this morning about the situation at New Orleans. We have had no disturbances of any kind on our property and every one here thinks the situation will gradually improve. We are using every possible precaution to protect our interests.

L. S. THORNE.

297 E. H. L., JANUARY 8, 1900. PLAINTIFFS' EXHIBIT A A.

(See *ante*, p. 219.)

(El Paso route.)

The Texas and Pacific Railway Co.

L. S. Thorne, third vice-president and gen'l manager; J. W. Everman, ass't general manager.

On No. 53, N. O. div.

DALLAS, TEX., *November 11th*, 1894.

Mr. C. E. Satterlee, secretary and treasurer T. & P. R'y, New York city.

DEAR SIR: Left New Orleans this morning for Dallas; during the time I was in New Orleans, I went over the ground very thoroughly; while the situation today is no worse than it usually is at some time during each cotton season, at the same time the conditions are very unsatisfactory, and we must have relief immediately, or commence storing cotton, at such places as are most satisfactory and economical. There is a warehouse in Gretna, reached by our tracks, which I think we can lease, and there are also a number of old cotton yards and compress yards, in the city. I was around and saw the different steamship agents, and they have made all kinds of promises. If the vessels due and overdue, show up, this week, we should be in much better shape by Saturday night. The facts however, are that vessels when loading, only load from a few hundred to fifteen hundred bales per day, and it is considered a good day's delivery when we deliver five or six thousand bales per day, of cotton, even
298 with several vessels loading, and this is not sufficient to keep up with our receipts, without we turn cotton from New

Orleans. We are having no trouble with our F. O. B. cotton—you understand that the cotton that is troubling us, is export cotton, on through bills of lading. Martin, Wise and Fitzhugh have on hand on our grounds at New Orleans, this morning, about thirteen thousand bales of cotton, and about eighty car-loads in cars, but claim they have the tonnage in sight, and will reduce this amount very materially the present week. We can unload no more cotton at Westwego, until some of the cotton on hand is disposed of. There is one vessel now overdue, that will take ten or eleven thousand bales, and there is one or two steamers in addition to those, due at Westwego tomorrow. In the meantime, we expect to finish up the two vessels that are now there loading cotton-seed cake and meal.

Up until fifteen days ago, our cotton had been moving out of New Orleans in better shape than ever before, and I am satisfied, but for the labor troubles that we would have had no trouble whatever this year, notwithstanding the heavy receipts. Several vessels left New Orleans, for other ports, on account of being unable to load, and a number of vessels that were en route for New Orleans changed their destinations to other ports, however, the general opinion seems to be that there will be no further labor troubles, although no one can tell.

On receipts at New Orleans, we are ahead, this date, as compared with last year, eighty thousand bales, and over seventy thousand bales ahead of the same date of any previous season—and if the weather and conditions remain favorable, and the cotton keeps moving, we should move into New Orleans on an average of from six to eight thousand bales of cotton per day for the next thirty days. Without there is a marked improvement in the situation, I will return to New Orleans in three or four days. In the meantime, we are seeing what arrangements we can make, for storing cotton. Will regret the additional expense, but believe it best to divide the risk as much as possible, and try and secure the business while there is a show—as the present conditions will only last for a few weeks.

299

The steamer Hendricks, in the Teche line, arrived at Indian Village yesterday with two thousand barrels of sugar for New Orleans, and eighty for Dallas. We have already received from the Bayou La Fouche, and handled through our new elevator, seven thousand barrels of sugar.

Yours very truly,

L. S. THORNE.

PLAINTIFFS' EXHIBIT No. 36.

(See *ante*, p. 164.)

(Form 2370.)

The Texas & Pacific Railway Co.

NEW ORLEANS, LA., —— —, 1894.

M. —— ——, agents —— S. S. line:

I have this day engaged — bales cotton for shipment by the —— S. S. line for —— ——, at — cents per one hundred pounds compressed cotton.

Account of —— ——.

Delivery ——.

Contract No. —.

Yours respectfully,

—— ——,

*Agent T. & P. Railway Co.*

300 The foregoing contains all the evidence offered or given on the trial of the cause, and upon the application of the plaintiffs this bill of exceptions is allowed by me and ordered to become part of the record in this cause at the term aforesaid, and to be filed *nunc pro tunc* as of the 16th day of January, 1900.

E. HENRY LACOMBE,

*United States Circuit Judge.*

It is hereby stipulated and agreed that the foregoing bill of exceptions contains all the evidence offered or given upon the trial of this cause and that the same may be signed by the judge, and be filed *nunc pro tunc* as of the sixteenth day of January, 1900.

Dated February 2, 1900.

EVARTS, CHOATE & BEAMAN,

*Attorneys for Plaintiffs in Error.*

RUSH TAGGART,

*Attorney for Defendant in Error.*

U. S. circuit court. Filed Feb. 2, 1900. John A. Shields, clerk.

301 Circuit Court of the United States, Southern District of New York.

LOUIS AUGUSTE MARANDE, JULES EMILE ROEDERER, PAUL LEON Roederer, Plaintiffs in Error.

*against*

THE TEXAS AND PACIFIC RAILWAY COMPANY, Defendant in Error.

Afterwards, to wit, at the same term at which the above-entitled cause was tried and judgment therein rendered, before the judges of the United States circuit court of appeals for the second circuit, at the United States court, in the Post-office building, in the borough

of Manhattan, in the city of New York, came the said plaintiffs Louis Auguste Marande, Jules Emile Roederer and Paul Leon Roederer, plaintiffs in error, by their attorneys Evarts, Choate & Beaman, and say, that in the records and proceedings in the said cause there is manifest error in this, to wit:

I. That the court on the trial during the examination of the witness Harris, excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. Prior to the erection of this dock, did you consider Westwego as commercially in the port of New Orleans?

A. No, sir.

302 II. That the court on the trial during the examination of the witness Fallon excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. Prior to 1893 did you consider Westwego as commercially within the port of New Orleans?

A. No, sir.

III. That the court on the trial during the examination of the witness Warriner excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. According to the custom and usage at the port of New Orleans as it existed prior to the season of 1893 and 1894, would cotton consigned to a foreign port be delivered to a ship at Westwego?

A. No.

IV. That the court on the trial during the examination of the witness Warriner excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. Prior to the erection of this dock did you consider Westwego as being commercially within the port of New Orleans?

A. We didn't know Westwego at all.

V. That the court on the trial during the examination of the witness Warriner excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. In 1893–1894 if the Texas and Pacific Railway Company had offered you for transportation on your ships less than 2,000 bales of cotton, where, by the custom of the port of New Orleans, would such cotton have been received by you?

A. In the city, in the absence of any special agreement.

303 VI. That the court on the trial during the examination of the witness Hammond excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. Prior to the erection of this dock or docks, had the Texas and Pacific Railway Company offered cotton to you for transportation on your ships, where would that cotton have been received?

A. At our wharf, or at the wharf where the steamship might be loading, in New Orleans.

VII. That the court on the trial during the examination of the witness Hammond, excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. Prior to the erection of this dock was Westwego considered commercially within the port of New Orleans?

A. No.

VIII. That the court on the trial during the examination of the witness Ross, excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. According to the customs and usages of the port of New Orleans as they existed prior to the season of 1893 and 1894, would cotton consigned to a foreign port have been delivered to the ship at Westwego?

A. Not unless by special agreement.

IX. That the court on the trial during the examination of the witness Sanders, excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. According to the custom and usage in the port of New
304 Orleans as it existed prior to the season of 1893–1894, would cotton consigned to a foreign port have been delivered to the ship at Westwego?

A. No; unless the Texas and Pacific had their wharf at Westwego. Prior to the existence of their wharf, no.

X. That the court on the trial during the examination of the witness Satterlee, after having received evidence offered on behalf of the plaintiffs in error, as follows:

Q. When you got down there (to New Orleans), did you make any investigation or direct any investigation to be made of the origin of the fire?

A. No, sir; I don't know as I did; I had charge of the insurance on the property and hence I wished to go down and adjust as far as possible, the loss being a very heavy one.

Q. You mean the insurance on the cotton as well as the insurance on the dock?

A. Yes, sir; the insurance on the whole property from one end to the other I had charge of that for it for many years.

Excluded evidence offered on behalf of the plaintiffs in error, as follows:

Q. What insurance did the company have upon the cotton?

Q. Is it not a fact that the Texas and Pacific Railway Company had a common carrier's liability insurance upon all the cotton upon that dock?

Q. Did the Texas and Pacific Railway Company have insurance upon any of this cotton against common carrier's liability?

XI. That at the conclusion of the testimony the court erred in refusing to direct a verdict for the plaintiffs in error.

305 XII. That at the conclusion of the testimony the court erred in refusing to allow the plaintiffs in error to go to the jury.

XIII. That at the conclusion of the testimony the court erred in directing a verdict for the defendant in error.

Wherefore, the plaintiffs in error pray that the judgment herein may be reversed, annulled and altogether held for nothing, and that they may be restored to all things that they have lost by occasion of the said judgment.

EVARTS, CHOATE & BEAMAN,
*Attorneys for Plaintiffs in Error.*

(Endorsed:) Circuit court of the United States, southern district of New York. Louis Auguste Marande and others against The Texas & Pacific Railway Co. Assignment of errors. Evarts, Choate & Beaman, 52 Wall street, New York city, attorneys for plaintiffs. U. S. circuit court. Jan. 23, 1900. John A. Shields, clerk.

306 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

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| Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer *vs.* The Texas and Pacific Railway Company. | Bond for Damages and Costs. |

Know all men by these presents, that we, the American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, of No. 100 Broadway, New York city, are held and firmly bound unto the above-named The Texas and Pacific Railway Company in the sum of two hundred and fifty dollars ($250) to be paid to the said The Texas and Pacific Railway Company, for the payment of which, well and truly to be made, we bind ourselves and our successors firmly by these presents.

Sealed with our seals and dated the twenty-second day of January, in the year of our Lord nineteen hundred.

Whereas, the above-named Louis Auguste Marande, Jules Emile Roederer and Paul Leon Roederer are about to prosecute a writ of error to the United States court of appeals for the second circuit to reverse the judgment rendered in the above-entitled suit by
307 the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the said Louis Auguste Marande, Jules Emile Roederer and Paul Leon Roederer shall prosecute said writ of error to effect and answer all damages and costs, if they fail to make their plea good, then this obligation shall be void; otherwise we, the above-bounden American Surety Company of New York shall do the same for them.

AMERICAN SURETY COMPANY OF NEW YORK,
By DAVID B. SICKLES, *Vice-President.*
[L. S.] CORTLANDT S. VAN RENSSELAER, *Attorney.*

State and County of New York, *ss:*

On this 22d day of January, 1900, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say: That he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal

affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said David B. Sickels further said that he was acquainted with Cortlandt S. Van Rensselaer and knew him to be one of the attorneys of said corporation; that
308 the signature of said Cortland S. Van Rensselaer subscribed to the said instrument is in the genuine handwriting of the said Cortlandt S. Van Rensselaer and was thereto subscribed by the like order of the said board of directors, and in the presence of him the said David B. Sickels, vice-president.

K. J. PEIRCEY,
*Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland and Nassau Co's.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries or one of the attorneys."

COUNTY OF NEW YORK, *ss.*

I, Cortlandt S. Van Rensselaer, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true
309 transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 22d day of January, 1900.

[L. S.] CORTLANDT S. VAN RENSSELAER, *Attorney.*

(Endorsed:) Approved as to form and also as to sufficiency of sureties, with reservation, however, to the defendant of the right at any time to examine the proper officers of the surety company, under oath touching its assets, liabilities, and financial condition generally. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court. Filed Jan. 23, 1900. John A. Shields, clerk.

By the Hon. E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To the Texas and Pacific Railway Company and Rush Taggart, Esquire, its attorney, Greeting:

You are hereby cited and admonished to be and appear before a United States circuit court of appeals for the second circuit, to be holden at the borough of Manhattan, in the city of New York, in the district and circuit above named, on the 15th day of February, 1900, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Louis Auguste Marande, Jules Emile Roederer and Paul Leon Roederer are plaintiffs in error, and The Texas and Pacific Railway Company is defendant in error, to show cause, if any there be, why the judgment in said writ of error men-
310 tioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 22d day of January, in the year of our Lord one thousand nine hundred, and of the Independence of these United States the one hundred and twenty-fourth.

[L. S.] E. HENRY LACOMBE,
*Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.*

(Endorsed:) United States circuit court of appeals for the second circuit. Louis Auguste Marande and others, plaintiffs in error, *vs.* The Texas and Pacific Railway Company, defendants in error. Citation. Evarts, Choate & Beaman, att'ys for pl'fs in error, 52 Wall street, New York city, N. Y. Due service of a copy of the within citation is hereby admitted this 23d day of January, 1900. Rush Taggart, attorney for defendant in error. U. S. circuit court. Filed Jan. 23, 1900. John A. Shields, clerk.

311 United States Circuit Court of Appeals for the Second Circuit, October Term, 1899.

Submitted March 16, 1900; decided May 24, 1900.

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| Louis Auguste Marande et al., Plaintiffs in Error. *vs.* The Texas & Pacific Railway Company, Defendant in Error. | No. 149. Error to the Circuit Court of the United States for the Southern District of New York. Before Judges Wallace and Shipman. |

Wallace, *Circuit Judge:*

The plaintiffs brought this action to recover the value of 65 bales of cotton, their property, which *was* destroyed by fire while in the cars of the defendant, a railway carrier, which pursuant to the terms of a bill of lading had undertaken to transport the cotton

from Greenville, Texas, to the port of New Orleans and deliver it there to a steamship carrier for transportation to Havre. By the bill of lading the defendant was not to be liable for any loss by fire, nor in any other respect than as a warehouseman while the property was awaiting further conveyance by steamship carrier. The cotton had arrived at Westwego, the terminus of a branch of the defendant's line of railway on the west bank of the Mississippi river opposite the city of New Orleans where the defendant had a wharf and customarily delivered cotton for export to the steamship carrier, but had not been unladen owing to the accumulation of cotton
312 upon the wharf when the fire occurred. There were two covered sheds upon the wharf distant from one another about 100 feet, each shed being about 250 to 300 feet long and of about the same width; and these sheds and a considerable part of the intervening space were filled with cotton in bales. The fire occurred November 12, 1894, about 6.30 p. m. It originated near the centre of shed No. 2 and was discovered immediately, but spread so rapidly that all efforts to extinguish it were unavailing, and not only the cotton upon the wharf but also that in the cars in the vicinity of the wharf was consumed.

Upon the trial the plaintiffs sought to recover upon the theory that Westwego was not a part of the port of New Orleans and because of a deviation by the carrier in taking the cotton there, contended that the exemptions of liability contained in the bill of lading did not relieve the defendant. The plaintiffs also sought to recover upon the theory that their loss was caused by the negligence of the defendant; and offered evidence in support of two issues, (1) that the cotton was exposed to danger of fire from incendiaries, and from a locomotive which during the forenoon had been on the tracks of the wharf, and (2) that the fire could have been extinguished before their cotton was burned if the defendant had provided proper appliances and exercised reasonable diligence. The trial judge directed a verdict for the defendant, and refused to submit the question of the negligence of the defendant to the jury. Error is assigned of this ruling.

We had occasion to consider the first ground of recovery in Reiss *v.* The Texas and Pacific Railway Company, an action similar to this and growing out of the same fire, and for the reasons stated in the opinion in that case do not regard it as tenable. The supplementary evidence does not change the facts or distinguish them in any material particular from those in the Reiss case.

As to the second ground of recovery, the case as to the first issue hardly merits discussion. That there were evil-disposed persons in the vicinity who might have set fire to the cotton, and that the
313 defendant by keeping a larger force of watchmen at its wharf might have more efficiently protected its property from risk, are facts that may be assumed to be proved by the evidence. But these facts did not prove or tend to prove that the fire actually was the work of an incendiary, and there was not a scintilla of evidence to prove this. On the other hand the place where it was shown the fire started raised a persuasive inference against the theory of an

incendiary origin, because it started at the most unlikely and dangerous place for the operations of an incendiary. There was not a particle of evidence to connect the locomotive with the fire. If the fire had started in the cotton which was stored in the vicinity of the locomotive, there would have been one fact of value; but it did not. It does not appear that the locomotive emitted any sparks or dropped any coals; no fact was elicited to prove that the locomotive engendered risk beyond its mere presence; and seven or eight hours had elapsed after the locomotive was taken away. The case for the plaintiffs as to the negligent origin of the fire rested wholly upon conjecture and speculation. The evidence upon the second issue, introduced for the purpose of showing that the fire should have been extinguished earlier, merely tended to prove that it could and probably would have been extinguished earlier if an employé of the defendant had not in a moment of excitement and peril failed to exercise the good judgment of a deliberate occasion. The fire started, as has been said, near the centre of the building and close by one of the three or four gangways running across the building left for access to the bales. There was a hydrant with hose attached close at hand, the hose being coiled about a post. The watchman who discovered the fire immediately ran to the hydrant, turned on the water, uncoiled part of the hose, clambered up on top of the bales, carrying the end of the hose, and directed the hose upon the fire, but the water would not run from the nozzle. Supposing he had not opened the valve, he called to another watchman who in the meantime had come to his assistance to open the valve, and the latter finding it had been opened tried to aid the first watch-
314 man in straightening out the hose. Before this could be accomplished, and in the space of a few seconds, the fire had spread so rapidly that it was beyond control. The evidence indicates that the hose had become kinked while the watchman was carrying it to the place of the fire and that the water in it made it so heavy and cumbrous that it could not be straightened out in the few seconds available so as to permit the water to escape. This probably would not have happened if the requisite length of hose to reach the fire had been unwound from the post and straightened out before the water was turned on. This, however, would have involved delay, and seconds were precious. There was a chance that what did happen would happen, but we do not think a jury would have been justified in finding that the watchman was in fault for not anticipating and providing against the contingency. He was laboring under the excitement of imminent peril, and did what any ordinarily prudent man trying to save his own property from destruction would have been likely to do under the same circumstances. The law does not exact the same measure of prudent judgment from those who have to act in the sudden emergency of a great peril as upon ordinary occasions. In Thurber *v.* Harlem, etc., R. R. Co. (60 N. Y., 336), the court declared it to be "the well-established rule that persons in sudden emergencies, and called to act under peculiar circumstances, are not held to the exercise of the same degree of caution as in other cases," and this statement of the

law is quoted with approval in Union Pacific R. R. Co. *v.* McDonald (152 U. S., 281). See also Winn *v.* Railroad Co. (133 N. Y., 575); Bitner *v.* Crosstown Railway Co. (153 N. Y., 76); Stabenau *v.* Railroad Co. (155 N. Y., 511).

Error is assigned of the exclusion by the trial judge of evidence offered by the plaintiffs for the purpose of showing that in 1893 Westwego was not in commercial and business understanding a part of the port of New Orleans. The issue upon this branch of the case related wholly to the situation after the erection of the wharves at Westwego, and it was not claimed by the defendant that as
315 early as 1893 Westwego had been regarded as a part of the commercial port. The evidence offered would not have thrown any light upon the issue involved, and we think it was properly excluded.

We find no error in the record, and the judgment is affirmed with costs.

Treadwell Cleveland, for the plaintiffs in error.
Rush Taggart, for the defendant in error.

316 At a stated term of the United States circuit court of appeals in and for the second circuit, held at the court-rooms, in the post-office building, in the city of New York, on the 4th day of June, one thousand nine hundred.

Present: Hon. William J. Wallace, Hon. Nathaniel Shipman, circuit judges.

LOUIS AUGUSTE MARANDE ET AL., Plaintiffs in Error,
*vs.*
THE TEXAS & PACIFIC RAILWAY COMPANY, Defendant in Error.

Error to the circuit court of the United States for the southern district of New York.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the southern district of New York, and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the judgment of said circuit court be, and it hereby is, affirmed with costs.

It is further ordered that a mandate issue to the said circuit court in accordance with this decree.

W. J. W.

317 [Endorsed:] United States circuit court of appeals, second circuit. Louis A. Marande *vs.* Texas & Pacific R'y Co. Order for mandate. United States circuit court of appeals, second circuit. Filed Jun- 6, 1900. William Parkin, clerk.

318 United States Circuit Court of Appeals for the Second Circuit.

LOUIS AUGUSTE MARANDE, JULES EMILE ROEDERER, and PAUL LEON ROEDERER, Plaintiffs in Error,
*against*
THE TEXAS & PACIFIC RAILWAY COMPANY, Defendant in Error.

*Assignment of Errors.*

Now come Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer, plaintiffs in error, and say there is error in the record and proceedings in the above-entitled matter in this, to wit:

First. That the said circuit court of appeals erred in affirming the judgment of the circuit court rendered against the plaintiffs in error and in favor of the defendant in error, upon the trial of this cause.

Second. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of this cause, during the examination of the witness Harris, in excluding evidence offered on behalf of the plaintiffs in error, as follows:

Q. Prior to the erection of this dock did you consider Westwego as commercially in the port of New Orleans?
A. No, sir.

319 Third. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of this cause, during the examination of the witness Fallon, in excluding evidence offered on behalf of the plaintiffs in error, as follows:

Q. Prior to 1898 did you consider Westwego as commercially within the port of New Orleans?
A. No, sir.

Fourth. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of this cause, during the examination of the witness Warriner, in excluding evidence offered on behalf of the plaintiffs in error, as follows:

Q. According to the custom and usage at the port of New Orleans, as it existed prior to the season of 1893 and 1894, would cotton consigned to a foreign port be delivered to a ship at Westwego?
A. No.

Fifth. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of this cause, during the examination of the witness Warriner, in excluding evidence offered on behalf of the plaintiffs in error, as follows:

Q. Prior to the erection of this dock did you consider Westwego as being commercially within the port of New Orleans?
A. We didn't know Westwego at all.

320 Sixth. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of this cause, during the examination of the witness Warriner, in excluding evidence offered on behalf of the plaintiffs in error, as follows:

Q. In 1893–1894, if the Texas and Pacific Railway Company had offered you for transportation on your ships less than 2,000 bales of cotton where, by the custom of the port of New Orleans, would such cotton have been received by you?

A. In the city in the absence of any special agreement.

Seventh. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of this cause, during the examination of the witness Hammond, in excluding evidence offered on behalf of the plaintiffs in error, as follows:

Q. Prior to the erection of this dock or docks, had the Texas and Pacific Railway Company offered cotton to you for transportation on your ships where would that cotton have been received?

A. At our wharf or at the wharf where the steamship might be loading in New Orleans.

Eighth. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of this cause, during the examination of the witness Hammond, in excluding evidence offered on behalf of the plaintiffs in error, as follows:

321 Q. Prior to the erection of this dock was Westwego considered commercially within the port of New Orleans?

A. No.

Ninth. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of this cause, during the examination of the witness Ross, in excluding evidence offered on behalf of the plaintiffs in error, as follows:

Q. According to the custom and usages of the port of New Orleans as they existed prior to the season of 1893 and 1894, would cotton consigned to a foreign port have been delivered to the ship at Westwego?

A. Not unless by special agreement.

Tenth. That the said circuit court of appeals erred in holding that the said circuit court committed no error on the trial of this cause, during the examination of the witness Sanders, in excluding evidence offered on behalf of the plaintiffs in error, as follows:

Q. According to the custom and usage in the port of New Orleans as it existed prior to the season of 1893–1894, would cotton consigned to a foreign port have been delivered to the ship at Westwego?

A. No; unless the Texas and Pacific had their wharf at Westwego. Prior to the existence of their wharf, no.

Eleventh. That the said circuit court of appeals erred in
322 holding that the said circuit court committed no error upon the trial of said cause in refusing to direct a verdict for the plaintiffs in error at the conclusion of the testimony.

Twelfth. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of said cause in refusing at the conclusion of the testimony to allow the plaintiffs in error to go to the jury on the question whether Westwego was, within the terms of the bill of lading, such a place within the port of New Orleans as the cotton could be taken to and unloaded by the defendant in error or was so well known by commercial custom of such long standing or so general or so universal as to be fairly within the constructive knowledge of the shippers.

Thirteenth. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of said cause in refusing at the conclusion of the testimony to allow the plaintiffs in error to go to the jury upon the question of the negligence of the defendant in error.

Fourteenth. That the said circuit court of appeals erred in holding that the said circuit court committed no error upon the trial of this cause in directing at the conclusion of the testimony a verdict in favor of the defendant in error.

Wherefore the plaintiffs in error pray that the judgment herein may be reversed, annulled, and altogether held for nothing,
323 and that they may be restored to all things that they have lost by occasion of the said judgment, and that a judgment in their favor may be entered, as prayed in their complaint.

EVARTS, CHOATE & BEAMAN,
*Attorneys for Plaintiffs in Error,*
*No. 52 Wall Street, New York, N. Y.*

321 [Endorsed:] United States circuit court of appeals for the second circuit. Louis Auguste Marande and o'rs, pl'tiffs in error, against The Texas & Pacific Railway Company, def't in error. Assignment of errors. Evarts, Choate & Beaman, 52 Wall street, New York city, attorneys for pl'tiffs in error. United States circuit court of appeals, second circuit. Filed Jun- 16, 1900. William Parkin, clerk. Rec'd June 12, 1900. R. W. Peckham.

325 Know all men by these presents that we, The American Surety Company of New York, a corporation organized and existing under the laws of the State of New York, of No. 100 Broadway, New York city, are held and firmly bound unto the Texas and Pacific Railway Company in the sum of one thousand dollars ($1,000), to be paid to the said The Texas and Pacific Railway Company: for the payment of which, well and truly to be made, we bind ourselves and our successors firmly by these presents.

Sealed with our seals and dated the 11th day of June, in the year of our Lord nineteen hundred.

Whereas lately, at a term of the United States circuit court in and for the southern district of New York, at the January term, 1900, in

a suit depending in said court between Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer, plaintiffs, and The Texas and Pacific Railway Company, defendant, a judgment was rendered against the said Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer for the sum of two hundred and fifty-nine dollars and twenty-five cents; and

Whereas the said Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer obtained a writ of error from the United States circuit court of appeals for the second circuit, which court on the fourth day of June, 1900, rendered a judgment affirming said judgment in all particulars, and the said The Texas and Pacific Railway Company having sued out a writ of error from the Supreme Court of the United States, and having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to said The Texas and Pacific Railway Company, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, therefore, the condition of this obligation is such that if the said Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise we, the above-bounden American Surety Company of New York, shall do the same for them.

AMERICAN SURETY COMPANY OF NEW YORK,
By DAVID B. SICKELS, *Vice-President.*
[L. S.] SAMUEL S. PERRY, *Attorney.*
(Stamp.) 75004. K. J. P.

326 STATE AND COUNTY OF NEW YORK, *ss:*

On this 11th day of June, 1900, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said David B. Sickels further said that he was acquainted with Samuel S. Perry and knew him to be one of the attorneys of said corporation; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry and was thereto subscribed by the like order of the said board of directors and in the presence of him the said David B. Sickels, vice-president.

K. J. PEIRCEY,
[L. S.] *Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland, and Nassau Co's.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be and they hereby are, and each one of them is authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for or on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds, and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company at the city of New York this 11th day of June, 1900.

[L. S.] SAMUEL S. PERRY, *Attorney.*

Approved to operate as supersedeas.

R. W. PECKHAM,
*Jus. Sup. C. of U. S.*

June 12, 1900.

327 American Surety Company of New York.

Incorporated April 14, 1884.

General offices, 100 Broadway.

*Financial Statement, March* 31, 1900.

Resources:

| | |
|---|---|
| Real estate and improvements | $3,013,217.16 |
| Stocks and bonds | 1,348,591.75 |
| Bills receivable | 112,733.55 |
| Cash in banks and offices | 592,103.56 |
| Premiums in course of collection | 198,040.02 |
| Accrued interest and rents | 28,384.84 |
| | $5,293,070.88 |

Liabilities:

| | |
|---|---|
| Capital stock | $2,500,000.00 |
| Surplus | 1,000,000.00 |
| Undivided profits | 898,169.86 |
| Premium reserve requirement | 601,228.36 |
| Claims in process of adjustment | 257,524.06 |
| Bills and accounts payable | 36,148.60 |
| | $5,293,070.88 |

328 STATE OF NEW YORK, }
*County of New York,* } *ss.:*

H. B. Zevely, being duly sworn, says: That he is an assistant secretary of the American Surety Company of New York; that said company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said company, and is duly qualified to act as surety under such laws. That said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13, 1894, entitled "An act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said company as rendered pursuant to section 4 of said act of Congress; that said American Surety Company of New York is worth more than $2,500,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

H. B. ZEVELY.

Subscribed and sworn before me this 11th day of June, 1900.

K. J. PEIRCEY,
*Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland, and Nassau Co's.

329 [Endorsed:] Louis Auguste Marande *v.* Texas & Pacific Railway. Bond on writ of error. United States circuit court of appeals, second circuit. Filed Jun- 16, 1900. William Parkin, clerk.

330 UNITED STATES OF AMERICA, *ss.:*

To the Texas and Pacific Railway Company or Rush Taggart, Esq., its attorney of record, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the second circuit, wherein Louis Auguste Marande, Jules Emile Roe-

derer, and Paul Leon Roederer are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. W. Peckham, associate justice of the Supreme Court of the United States, this 12th day of June, in the year of our Lord one thousand nine hundred.

R. W. PECKHAM,
*Associate Justice of the Supreme Court of the United States.*

331 [Endorsed:] U. S. Supreme Court. Louis Auguste Marande and o'rs against The Texas and Pacific Railway Company. Citation. Service of a copy of the within citation is hereby admitted. Dated New York, June 15, 1900. Rush Taggart, attorney for defendant in error. United States circuit court of appeals, second circuit. Filed Jun- 16, 1900. William Parkin, clerk.

332 UNITED STATES OF AMERICA, } ss:
*Southern District of New York,* }

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 331, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Louis Auguste Marande against The Texas & Pacific Railway Company, as the same remain of record and on file in my office.

Seal United States Circuit Court of Appeals, Second Circuit.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 16th day of June, in the year of our Lord one thousand nine hundred, and of the Independence of the said United States the one hundred and twenty-fourth.

WM. PARKIN, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled. W. P.]

333 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals, before you or some of you, between Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer, plaintiffs in error, and The Texas and Pacific Railway Company, defendant in error, a manifest error hath happened, to the great damage of the

said Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer, as by their complaint appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein
334 to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of June, in the year of our Lord one thousand nine hundred.

Seal of the Supreme Court of the United States.

JAMES H. McKENNEY,
*Clerk of the Supreme Court of the United States.*

Allowed by—

R. W. PECKHAM,
*Associate Justice of the Supreme Court of the United States.*

June 12, 1900.

335 [Endorsed:] Supreme Court of the United States. Louis Auguste Marande and o'rs, plaintiffs in error, *vs.* The Texas and Pacific Railway Company, defendant in error. Writ of error. Service of a copy of the within writ of error is hereby admitted. Dated New York, June 15, 1900. Rush Taggart, attorney for defendant in error. United States circuit court of appeals, second circuit. Filed Jun- 16, 1900. William Parkin, clerk.

Endorsed on cover: File No., 17,803. U. S. C. C. of appeals, 2nd circuit. Term No., 318. Louis Auguste Marande, Jules Emile Roederer, and Paul Leon Roederer, plaintiffs in error, *vs.* The Texas & Pacific Railway Company. Filed June 19, 1900.